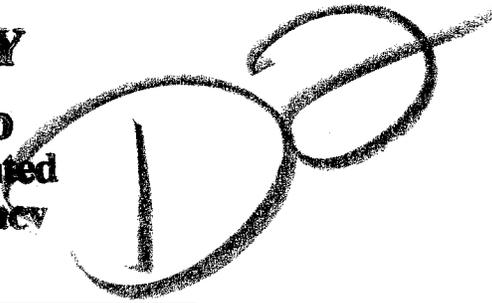


PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



FILE: WAC 02 251 54232 Office: CALIFORNIA SERVICE CENTER Date: **MAR 15 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § (a)(2)(v)(B)(1) as untimely filed.

The petitioner is a non-profit organization that teaches elementary school children the game of chess. It seeks to employ the beneficiary as a chess enrichment instructor, and endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the ground that the offered position did not qualify as a specialty occupation.

An affected party has 30 days from the date of an adverse decision to file an appeal. 8 C.F.R. § 103.3(a)(2)(i). If the adverse decision was served by mail, an additional three days is added to the proscribed period. 8 C.F.R. § 103.5 (a)(b). The record reflects that the director sent his decision of October 9, 2002, to the petitioner at the petitioner's address of record. The appeal was received by Citizenship and Immigration Services (CIS) 37 days later on November 15, 2002. Therefore, the appeal was untimely filed.

An appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1). If, however, an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5 (a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5 (a)(3).

On appeal, the petitioner states that the director's decision incorrectly found that past holders of the offered position did not hold college degrees, and that the petitioner did not require a college degree for the position. No evidence was submitted in support of these assertions. Thus, the appeal documentation fails to state new facts to be proved in a reopened proceeding supported by affidavits or other documentary evidence. Nor does the documentation: state reasons for reconsideration supported by pertinent precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy; and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. As such, the appeal will not be treated as a motion to reopen or reconsider and will, therefore, be rejected.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is rejected as untimely filed.