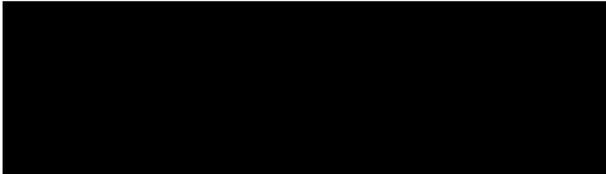




U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



D2

FILE: WAC 04 147 50116 Office: CALIFORNIA SERVICE CENTER Date: **AUG 10 2007**

IN RE: Petitioner:
Beneficiary:



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:



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.

James Blinzinger, for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a corporation engaged in the business of research and development of vitamins and minerals. It seeks to employ the beneficiary as a mechanical engineer. The petitioner endeavors to classify the beneficiary 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).

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider. 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three days are added to the proscribed period. 8 C.F.R. § 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner filed a Form I-290B which was properly received by the AAO on July 7, 2006. The petitioner's motion does not meet applicable requirements. The petitioner stated that additional evidence would be submitted in 30 days. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R §§ 103.5(a)(2) and (3). Accordingly, the motion must be dismissed for failing to meet applicable requirements.

The AAO issued its decision on May 26, 2006. The Form I-1290B was not received in proper filing condition until July 7, 2006, or 42 days after the decision was issued. Accordingly, the motion was untimely filed.

Neither counsel nor the petitioner presents any evidence for AAO to consider regarding the delay in timely filing the motion. 8 C.F.R. § 103.5(a)(1)(i). For this additional reason, the motion will be dismissed.

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 met that burden.

ORDER: The motion is dismissed.