

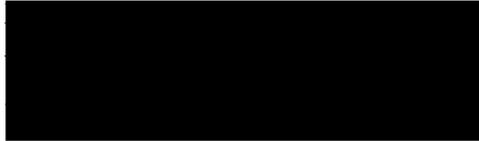
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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D-2

FILE: LIN 04 156 50372 Office: NEBRASKA SERVICE CENTER Date: JUL 24 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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and on January 11, 2006, the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the AAO decision, dated January 11, 2006, will be affirmed.

The petitioner is a provider of home healthcare services that seeks to employ the beneficiary as a financial analyst. 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). The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation. The AAO affirmed the director's findings.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before Citizenship and Immigration Services (CIS). 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three-day period is added to the 30-day 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's motion does not meet applicable requirements because it was not timely filed. The AAO mailed its decision to the petitioner on January 11, 2006. The petitioner subsequently forwarded the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), to the AAO in error. An appeal/motion is not properly filed until the proper office, in this case the Nebraska Service Center, receives it.

The petitioner resubmitted the motion to the Nebraska Service Center in accordance with the instructions. The motion was received by the Nebraska Service Center on March 21, 2006, 69 days after the decision was issued. Accordingly, the motion was untimely filed. The petitioner presents no evidence for CIS to consider regarding the delay in timely filing the motion. 8 C.F.R. § 103.5(a)(1)(i). Accordingly, 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. The AAO decision, dated January 11, 2006, is affirmed. The petition is denied.