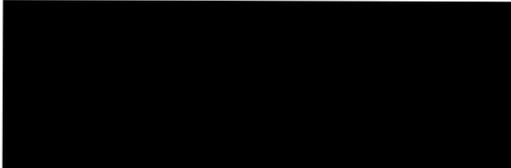


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FILE: WAC 07 142 53887 Office: CALIFORNIA SERVICE CENTER Date: **AUG 05 2008**



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

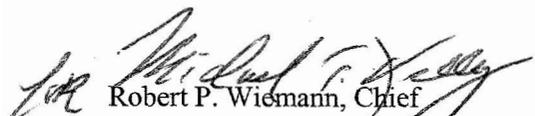
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued the decision on July 2, 2007. It is noted that the instructions on the Form I-290B (Notice of Appeal) gave notice to the petitioner that it had 33 days to file the appeal. Counsel subsequently forwarded the Form I-290B, Notice of Appeal or Motion, to the AAO in error. An appeal/motion is not properly filed until the proper office, in this case the California Service Center, receives it. Counsel resubmitted the appeal to the California Service Center in accordance with the instructions. The appeal was received by the California Service Center on August 29, 2007, 58 days after the decision was issued.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

An untimely filed appeal must meet specific requirements to be treated as a motion. The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Furthermore, 8 C.F.R. § 103.5(a)(3) requires that a motion to reconsider must 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.

Review of the record indicates that the appeal does not meet either of these requirements.

The director denied the petition on the ground that the petitioner had not demonstrated that the proffered position qualifies as a specialty occupation.

On appeal, counsel argues that the petitioner has amply demonstrated that the proffered position is not an entry-level position but rather a position requiring a minimum of a bachelor's degree. As supporting documentation, counsel submits information related to SVP ratings and copies of the documentation he submitted in response to the director's request for evidence (RFE). It is noted that the documentation counsel submitted in response to the RFE also included information related to SVP ratings. Counsel does not state new facts, supported by affidavits or other documentary evidence. Furthermore, counsel neither states a clear reason for reconsideration nor provides any precedent decision to establish that the decision was based on an incorrect application of law or CIS policy. For these reasons, the director appropriately declined to treat the appeal as a motion to reopen or reconsider.

As the appeal was untimely filed and the petitioner has failed to provide any new facts or evidence that support a motion to reopen, the appeal must be rejected.

ORDER: The appeal is rejected as untimely filed.