

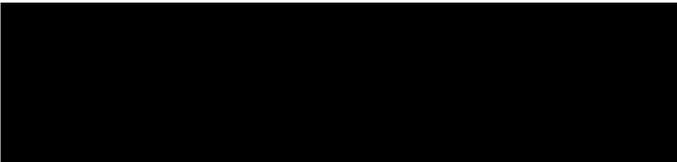
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U.S. Citizenship  
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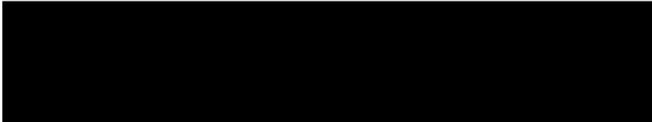
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FILE: SRC 04 001 50154 Office: TEXAS SERVICE CENTER Date: FEB 08 2008

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center. The director's decision was then appealed to the Administrative Appeals Office (AAO). That appeal was dismissed by the AAO on July 26, 2006. The matter is now before the AAO on a motion to reopen and reconsider pursuant to 8 C.F.R. § 103.5. The motion shall be dismissed. The previous decision of the AAO will be affirmed.

The petitioner is an import/export business and presently seeks to employ the beneficiary as a commercial and marketing manager. It 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 ground that the beneficiary was not qualified to perform the duties of a specialty occupation. The AAO then dismissed the petitioner's appeal on the same ground.

The regulation at 8 C.F.R. § 103.5(1)(i) provides in pertinent part:

[A]ny motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before the period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

If the adverse decision was served by mail, an additional three-day period is added to the prescribed period. 8 C.F.R. § 103.5a(b). Counsel seeks to reopen and reconsider the decision of the AAO that was issued on July 26, 2006. The motion to reopen and reconsider was filed on October 10, 2006, and would have been timely if received by Citizenship and Immigration Services (CIS) on or before August 28, 2006. The motion is, therefore, not timely. Further, the petitioner has not established that the delay in filing the motion was reasonable and beyond the control of the applicant or petitioner. The motion must accordingly be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion is dismissed. The previous decision of the AAO dated July 26, 2006 is affirmed.