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FILE: WAC 07 046 51608 Office: CALIFORNIA SERVICE CENTER Date: SEP 30 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:

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the AAO. The appeal is rejected as untimely filed.

The petitioner provides business solutions and software development electrical services. It seeks to employ the beneficiary as a programmer analyst. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On May 13, 2008, the director denied the petition determining that the petitioner: had not established an employer-employee relationship between the petitioner and the beneficiary; had not established that it had submitted a valid Form ETA 9035E, Labor Condition Application (LCA); and had not established that the proffered position qualified as a specialty occupation.

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). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a Citizenship and Immigration Services (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on May 13, 2008. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. According to the date stamp on the Form I-290B Notice of Appeal, it was received by CIS on June 30, 2008 or 48 days after the decision was issued. Accordingly, the appeal was untimely filed.

The AAO acknowledges the petitioner's statement on the Form I-290B, Notice of Appeal or Motion, indicating that the director's decision was mailed May 29, 2008 and not on the date the decision was issued. The petitioner attaches an envelope from CIS addressed to the petitioner with a United States postmark of May 29, 2008. The petitioner does not provide any other evidence, statement, or assertions on appeal and checks Box "C" in Part 2 of the Form I-290B, which indicates that the petitioner will not submit a supplemental brief or additional evidence. The AAO finds that even if the appeal would be accepted as timely filed, the appeal would be summarily dismissed as the petitioner does not submit any further documentary evidence or argument sufficient to overcome the director's decision in this matter. The AAO notes: "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." 8 C.F.R. § 103.3(a)(1)(v). In this matter, the petitioner does not address the director's findings or determinations regarding the record of evidence as submitted in support of this petition and fails to specify how the director's decision included an erroneous conclusion of law or statement fact when denying the petition. Thus, in accordance with 8 C.F.R. § 103.3(a)(1)(v), the appeal would be summarily dismissed.

The AAO further observes that an untimely-filed appeal that meets the specific requirements of a motion to reopen or a motion to reconsider is 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. The regulation at 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. Again, the petitioner does not provide any new facts to be considered in a reopened proceeding, nor does the petitioner provide new documentary evidence. Further, the petitioner does not state a clear reason for reconsideration and does not provide any precedent decision to establish that the decision was based on an incorrect application of law or CIS policy. For these reasons, the appeal will not be treated 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. The petition is denied