



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



PUBLIC COPY

FEB 12 2001

File: SRC 98 180 51471 Office: Texas Service Center Date:

IN RE: Petitioner:
Beneficiary:



**identification data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected as untimely filed.

The petitioner, a company that imports and exports arts and crafts, seeks authorization to extend its authorization to employ the beneficiary temporarily in the United States as its operations manager. The director determined that the petitioner had not submitted requested documentation, had not demonstrated that the beneficiary had been or would be employed in a primarily managerial or executive capacity, and had submitted insufficient evidence to establish that the U.S. entity is a bona fide import/export company.

On appeal, counsel argues that the Service erred and abused its discretion in by citing case law relating to a different nonimmigrant classification, and that the Service erred in its interpretation of its own regulations. Counsel indicates that she needs "60 days to submit a brief and/or evidence to the AAU." Although the actual appeal Form I-290B clearly states that such an extension of time in which to submit a brief may be granted only for good cause shown and must be explained in a separate letter, counsel submitted no such explanation. Further, although the appeal was filed on November 19, 1998, as of this date nothing further has been received. As no additional information has been provided in support of the appeal, the record must be considered complete.

8 C.F.R. 103.3(a)(2)(v)(B)(1) states, in part, that an appeal which is not filed within the time allowed must be rejected as improperly filed. The director's decision is dated September 25, 1998. The appeal was received on November 19, 1998, 55 days after the director's decision.

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 as described in 8 C.F.R. 103.5(a)(2), or a motion to reconsider as described in 8 C.F.R. 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

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. 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 Service policy.

The petitioner does not provide any new facts to be considered in the reopened proceeding, nor does the petitioner provide affidavits

or other documentary evidence. Furthermore, the petitioner 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 Service policy. For these reasons, the appeal will not be treated as a motion to reopen or reconsider.

The appeal was untimely filed and the petitioner has failed to provide any new facts or evidence that support a motion to reopen, nor has the petitioner stated a clear reason for reconsideration to support a motion to reconsider. Accordingly, the appeal must be rejected.

ORDER: The appeal is rejected as untimely filed.