

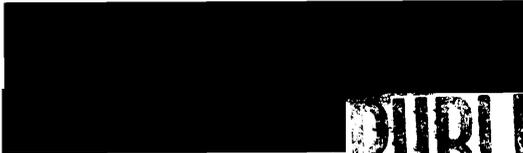


U.S. Department of Justice

Immigration and Naturalization Service

D7

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



PUBLIC COPY

JAN 23 2001

File: EAC 99 230 50374 Office: Vermont Service Center Date:

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

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:



identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

Mary C. Mulrean, Acting Director
Administrative Appeals Office

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

The petitioner, an import/export company, seeks to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not demonstrated that the beneficiary has been or will be employed in a primarily managerial or executive capacity.

On appeal, counsel argues that the beneficiary has been and will be employed in a primarily managerial or executive capacity, and submits additional information on appeal.

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 March 14, 2000. The appeal was initially received on April 13, 2000; however, the petition was unsigned by the petitioner. Any application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. 8 C.F.R. 103.2(a)(7)(i). The petitioner subsequently submitted an appeal on April 25, 2000. This appeal was signed by an attorney; however, the petitioner had not submitted a completed Form G-28, notice of appearance, indicating that the attorney was authorized to represent the petitioner on appeal. The appeal and properly completed Form G-28 were received on June 14, 2000, 91 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.

On appeal, counsel expresses disagreement with the decision of the director, and claims that the beneficiary has been and will be employed in a primarily managerial or executive capacity. In support of his argument, counsel essentially repeats previously submitted descriptions of the beneficiary's duties.

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 does not provide 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.

Beyond the director's decision, the petitioner has submitted insufficient evidence to establish that there is a qualifying relationship between the U.S. and foreign entities. On appeal, counsel states that the beneficiary "is the majority owner of both the U.S. and foreign entities." The petitioner initially claimed that the U.S. entity is a wholly-owned subsidiary of the foreign entity, Qinhuangdao Empire Trading Co., Ltd. This conflicting information has not been resolved. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988). In addition, the petitioner has not provided sufficient evidence to demonstrate that the beneficiary's employment in the United States will be temporary. Matter of Isovich, 18 I&N Dec. 361 (Comm. 1980); 8 C.F.R. 214.2(1)(3)(vii).

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.