

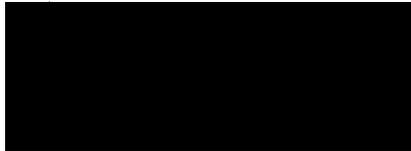
PUBLIC COPY

U.S. Department of Homeland Security
Citizenship and Immigration Services

D7

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N. W.
Washington, D.C. 20536



FILE: SRC 02 036 54587 Office: TEXAS SERVICE CENTER Date: DEC 12 2003

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)

ON BEHALF OF PETITIONER:
[Redacted]

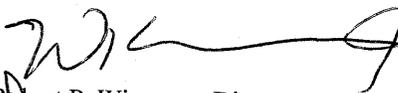
INSTRUCTIONS:

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The case will be remanded to the Texas Service Center to be treated as a motion.

The petitioner claims to be in the retail sales and services business (gas station and convenience store). The petitioner claims to be a branch of [REDACTED] located in India. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as executive director. The director determined that the petitioner had not established that the beneficiary had been or will be employed in a primarily managerial or executive capacity, and consequently denied the petition.

The petitioner filed an appeal challenging the director's findings and has submitted additional evidence in support of the appeal.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) states the following regarding time restrictions for appeals filed with the AAO:

The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

If the director's decision was mailed, the appeal must be filed within 33 days. See 8 C.F.R. § 103.5a(b).

In the instant case, the director issued her decision dismissing the petition on May 17, 2002. The director notified the petitioner that any appeal from her decision would be rejected if not received by the Citizenship and Immigration Services unit on or before June 20, 2002. The Notice of Appeal filed by counsel is date stamped as received on June 26, 2002. The appeal was filed and received after the expiration of the 33-day period allowed for filing an appeal. Consequently, the AAO must reject the petitioner's appeal as untimely filed.

However, regulations at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) state that CIS must treat certain untimely appeals as motions pursuant to the following guidelines:

If an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R.

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

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part, that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

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. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Upon review, the petitioner submitted sufficient new evidence to meet the requirements for a motion to reopen. Furthermore, counsel for the petitioner claims that the director's decision was based on an incorrect application of law or policy and relies on evidence submitted by the petitioner in support of her claims. Accordingly, the petitioner's untimely-filed appeal meets the requirements for a motion to reconsider.

The case will be remanded to the Texas Service Center to be considered as a motion to reopen and reconsider. The director shall review all the evidence of record, including the evidence submitted on appeal in which the petitioner addressed the issues singled out by the director in the denial notice.

ORDER: The appeal is hereby rejected. The case is remanded to the director for further consideration.