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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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



File: SRC-00-034-51846 Office: Texas Service Center

Date:

FEB 28 2003

IN RE: Petitioner:
Beneficiary:



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:



**Identifying data deleted to
prevent 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. The subsequent appeal was ~~dismissed by the Associate Commissioner for Examinations.~~ The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be rejected.

The decision from the Associate Commissioner was issued on January 18, 2001. The petitioner was given 30 days from the date of the notice to file a motion to reopen. The motion to reopen was received on April 12, 2001.

8 C.F.R. Section 103.5(a)(1)(i) states, in part:

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 this 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.

On motion to reopen, counsel submits evidence that the Associate Commissioner's notice was not mailed until January 23, 2001, and asserts that the notice was received by the petitioner's former representative on January 29, 2001. Counsel also contends that the petitioner was delayed in filing the motion to reopen because he was waiting for documentation from his accountant who was out of the office "as a result of a death in the family." It is noted that an attached letter from [REDACTED] CPA, indicates that the accountant had been "out of the office for a week." The evidence provided by counsel might explain why the filing of a motion to reopen would have been delayed by a few days; however, it does not sufficiently explain why the petitioner waited until April 12, 2001, nearly 90 days after the date of the Associate Commissioner's decision, to file the motion.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met, as the motion was untimely filed. Accordingly, the previous decision of the Associate Commissioner will not be disturbed.

ORDER: The motion to reopen is rejected.