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FEB 02 2004

FILE: WAC 00 135 51761 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



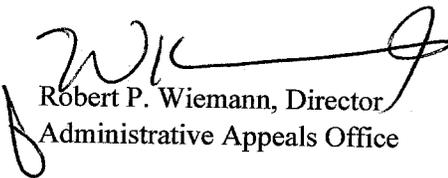
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO pursuant to a motion to reconsider. The motion will be granted and the previous decision of the AAO will be affirmed. The petition will be denied.

In a timely appeal to the AAO, dated January 8, 2001, the petitioner indicated that it would send a brief and evidence to the AAO within thirty days. In a decision dated June 17, 2002, the AAO summarily dismissed the appeal as no additional brief or evidence had been submitted by the petitioner. Likewise, the petitioner had failed to specifically identify on appeal "any erroneous conclusion of law or statement of fact for the appeal." 8 C.F.R. § 103.3(a)(1)(v).

On July 17, 2002, the petitioner filed this timely motion to reconsider asserting the following:

1. INS has incorrectly made its determination based on no written brief has been received [sic]. [The] discussion on page 2 indicated that "An 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." Copies of the decision from the Office of Administrative Appeals are attached as Exhibit A.
2. Petitioner filed its notice of appeal on December 29, 2000, requesting a 30 days [sic] extension to file its appeal brief. The appeal brief has been submitted to California Service Center at Laguna Niguel on January 26, 2001 by certified mail with return receipt requested. A copy of return receipt from postal office is attached as Exhibit B.

Consistent with the petitioner's assertion, a copy of a U.S. certified mail receipt was submitted, which reflected that a piece of mail was sent to the California Service Center on January 26, 2001.

The issue in the present case is whether the petitioner has sufficiently established that its motion to reconsider should be granted.

Pursuant to the regulation at 8 C.F.R. § 103.5(a)(3), the petitioner must comply with the following when submitting a motion to reconsider:

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. 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.

On review, the petitioner's motion to reconsider will be dismissed. The petitioner has failed to establish that the AAO's dismissal of the petition was based on an incorrect application of law or CIS policy.

The petitioner's argument, which is based on the submitted copy of the certified mail receipt, is not persuasive. The petitioner has essentially claimed that the mail receipt, postmarked on January 26, 2001, is evidence that it submitted a timely brief on appeal. The petitioner, however, failed to recognize its obligation to mail the brief and any additional evidence on appeal directly to the AAO. This requirement is clearly indicated on the appeal form, I-290B. More importantly, the petitioner chose this option on the appeal form,

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indicating that it would send its brief to the AAO within thirty days. As indicated on the certified mail receipt submitted by the petitioner, the claimed brief was instead incorrectly mailed to the California Service Center.

Furthermore, the regulations specifically address this issue. The regulation at 8 C.F.R. § 103.3(a)(2)(viii) states that when additional time is granted for the petitioner to submit a supporting brief, "the affected party shall submit the brief directly to the [AAO]." As the petitioner failed to submit its brief on appeal to the AAO, the AAO correctly summarily dismissed the appeal.

ORDER: The previous decision of the AAO is affirmed. The petition is denied.