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U.S. Citizenship
and Immigration
Services

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File: WAC 02 050 52262 Office: CALIFORNIA SERVICE CENTER Date:

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

AUG 10 2005

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 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The petitioner filed a subsequent appeal, which was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and/or reconsider. The motion will be rejected.

The petitioner seeks to classify the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

The director denied the petitioner on May 22, 2002. On June 26, 2002, counsel for the petitioner filed an appeal seeking review of the director's decision, and indicated on Form I-290B that it needed 90 days in which to forward a brief and/or additional evidence in support of the appeal. After reviewing the record, the AAO found that no brief and/or additional evidence had been submitted and summarily dismissed the appeal on March 23, 2004.¹ The petitioner has now filed a motion seeking to reopen and/or reconsider the appeal that was summarily dismissed.

In order to properly file a motion to reconsider or reopen, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of the decision that the motion seeks to reconsider. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The summary dismissal which the petitioner seeks to reopen and/or reconsider was rendered on March 23, 2004. The petitioner's motion was received on June 23, 2004, approximately 90 days after the AAO's decision was mailed. Any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

As the motion was untimely filed, the motion must be rejected.

ORDER: The motion is rejected.

¹ The record indicates that the director issued the decision in this matter on Wednesday, May 22, 2002. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Although counsel dated the appeal June 19, 2002, it was received by Citizenship and Immigration Services (CIS) on Wednesday June 26, 2002, or 35 days after the decision was issued. Accordingly, the appeal should have been rejected by the AAO as untimely filed. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. Had the AAO rejected the appeal, there would have been no decision on the part of the AAO that could have been reopened or reconsidered in this proceeding and thus, the instant motion would likewise be rejected.