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U.S. Department of Justice

Immigration and Naturalization Service

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

File: WAC 02 159 50116 Office: California Service Center

Date: JAN 22 2003

IN RE: Petitioner
Applicant

Application: Application for Change of Nonimmigrant Status Pursuant to 8 C.F.R. 248.3(a)

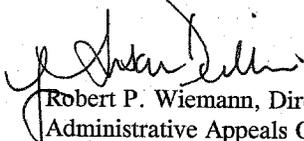
IN BEHALF OF APPLICANT:

PUBLIC COPY

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The petition for a nonimmigrant worker was filed as an application for a change of the applicant's status in the United States to that of an E-2 Treaty Investor, pursuant to 8 C.F.R. 248.3(a). The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The petition was denied by the Director, California Service Center, who incorrectly advised the applicant that the decision could be appealed to the Associate Commissioner for Examinations. Counsel for the petitioner subsequently filed an appeal.

The regulation at 8 C.F.R. 248.3(g) states:

Denial of application. When the application is denied, the applicant shall be notified of the decision and the reasons for the denial. There is no appeal from the denial of the application under this chapter.

The regulation cited above precludes the AAO from considering any appeal that is filed pursuant to the denial of an application to change a nonimmigrant status. Accordingly, the appeal will be rejected. It is noted that the director erroneously informed the petitioner that it had 30 days to file an appeal (33 days if the notice was delivered by mail); however, such an error does not, and cannot, supersede the regulation.

ORDER: The appeal is rejected.