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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FEB 23 2005

File: WAC 03 087 53124 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

[redacted]

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 employment-based immigrant visa petition. The director rejected an appeal as untimely filed and determined that the appeal did not meet the requirements of a motion to reopen. Counsel for the petitioner submitted a motion to reopen which was forwarded to the Administrative Appeals Office (AAO). The motion will be rejected.

The petitioner is a corporation organized in the State of California in January 1999. It operates a bakery. The petitioner seeks to permanently employ the beneficiary as its operations manager. Accordingly, the petitioner endeavors to classify the beneficiary as a multinational executive or manager immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition on February 26, 2004. On April 5, 2004, counsel for the petitioner filed a handwritten Form I-290B, Notice of Appeal, seeking review of the director's decision. On the Form I-290B Notice of Appeal, counsel for the petitioner indicated that a brief and/or evidence would be submitted within 30 days. The statement on the Form I-290B reads: "1. Misstatement of the Facts[;] 2. Misapplication of the Law[.]"

On April 6, 2004, the director rejected the appeal as untimely filed. The director also determined that the statement on the Form I-290B did not meet the requirements of a motion to reopen.

On April 20, 2004, counsel for the petitioner submitted a motion to reopen swearing under penalty of perjury that his "office was effectively shut down from March 18-March 27, 2004, due to a serious virus-like 'hi-jacking' of my computer, which rendered it inoperable." Counsel explained that his solo law practice depended on his computer and that but for the situation causing his law practice to come to a halt, his office would have timely filed the appeal. Counsel submitted an invoice for the repair of his computer.

The director forwarded the matter to the AAO for an opinion on his decision to reject the appeal.

The AAO observes that 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). The director properly rejected the appeal as untimely filed. In addition, the AAO notes that the Form I-290B Notice of Appeal is handwritten and could have been timely submitted without the use of a computer. Further, counsel could have requested time in addition to the 30 days requested to submit a brief and/or evidence. Finally, the AAO observes that counsel has never submitted a brief or any other evidence that could form the basis of an appeal.

As the service center director rejected the appeal, there is no decision on the part of the AAO that may be reopened in this proceeding. 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. The AAO did not enter a decision on this matter and has no jurisdiction over this motion. The AAO only proffers its opinion as requested and returns the motion to the director for his further consideration, if any.

ORDER: The motion is returned to the director for any action he deems necessary.