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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

D2

[redacted]

FILE: WAC 01 288 54312 Office: CALIFORNIA SERVICE CENTER Date: FEB 3 2004

IN RE: Petitioner: [redacted]
Beneficiary

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

ON 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 service center director denied the nonimmigrant visa petition and rejected the petitioner's subsequent appeal as untimely filed. The matter is now before the Administrative Appeals Office (AAO) on motion to reconsider the rejection of the appeal. The motion will be remanded to the service center director.

The petitioner, a company that sells herbal and ayurvedic food products, seeks to employ the beneficiary as an herbal food products consultant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director determined that the petition was untimely filed and that it did not meet the meet the requirements for a motion to reopen or reconsider. Accordingly, the director issued a decision that rejected the appeal and declined to treat it as a motion. Counsel now files a motion that Citizenship and Immigration Services (CIS) reconsider the rejection of the appeal. Counsel contends that, regardless of the late filing date of the appeal, the director should have considered the appeal because counsel had mailed it in sufficient time to reach the service center within the 33 days allotted by regulation.

Pursuant to 8 C.F.R. §§ 103.5(a)(i), (ii), and (iii)(E), motions to reopen or reconsider a decision by a service center director must be submitted to that director through his or her service center. Accordingly, the AAO hereby remands the motion to the director of the California Service Center, who is the official with jurisdiction over the motion.

ORDER: The motion is remanded to the director of the California Service Center.