

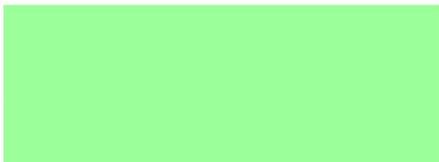
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U.S. Department of Homeland Security

U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

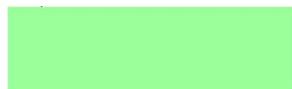


U.S. Citizenship
and Immigration
Services

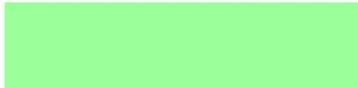


DATE: **MAR 08 2013**

OFFICE: TEXAS SERVICE CENTER



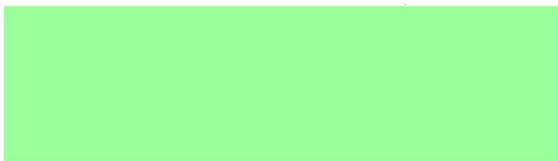
IN RE: Petitioner:



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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director, Texas Service Center. The Administrative Appeals Office (AAO) summarily dismissed the subsequently filed appeal and dismissed a subsequently filed motion to reopen and reconsider. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be dismissed and the director's and the AAO's decisions will be undisturbed.

The petitioner is a Florida corporation that is engaged in the retail sale of imported products, and seeks to employ the beneficiary as its Vice President/Financial Manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

On January 26, 2009, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. On May 14, 2010, the AAO summarily dismissed the appeal. On March 14, 2012, the AAO dismissed the subsequently filed motion to reopen and reconsider.

On April 17, 2012, counsel for the petitioner filed Form I-290B and stated that it is filing a motion to reopen and a motion to reconsider, and a brief and/or additional evidence is attached. The petitioner had the option of filing a motion to reopen or a motion to reconsider the AAO's most recent decision within 33 days of service pursuant to 8 C.F.R. §103.5. The regulation at 8 C.F.R. § 103.5(a) states that any motion to reopen a proceeding before USCIS must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that a delay was reasonable and beyond the control of the applicant or petitioner.

The AAO issued its last decision on March 14, 2012. The AAO properly gave notice to the petitioner that it could file a motion in accordance with 8 C.F.R. § 103.5. Although counsel dated the Form I-290B April 11, 2012, it was not received by the service center until April 17, 2012, or 34 days after the decision was issued. The motion was filed late because the motion was sent to the incorrect address and not to the address stated in the instructions for the Form I-290B. Accordingly, the motion was untimely filed.

As a matter of discretion, the applicant's failure to file the motion within the period allowed will not be excused as either reasonable or beyond the control of the applicant. Accordingly, the motion will be dismissed as untimely filed.

Furthermore, on motion, counsel for the petitioner contends that the AAO erred in summarily dismissing the prior appeal since the previous attorney did in fact file an appeal brief. Upon review of the prior appeal brief, the previous attorney also sent the brief to the incorrect address and thus, did not file the appeal correctly.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. 8 CFR 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be

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dismissed, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion will be dismissed. The director's and AAO's decision will be undisturbed. The petition remains denied.