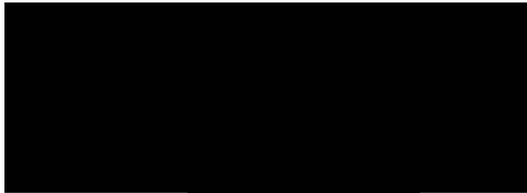


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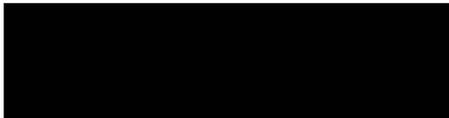
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IN RE:

Petitioner:

Beneficiary:



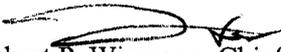
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, California Service Center. The matter subsequently came before the Administrative Appeals Office (AAO) on appeal. The AAO determined that the appeal was untimely filed and rejected the appeal. The AAO subsequently granted the petitioner's motion, but ultimately dismissed the appeal.<sup>1</sup> The matter is now on second motion before the AAO. The motion will be dismissed. The AAO's prior decision dismissing the appeal will be affirmed.

The petitioner is a Virginia corporation that seeks to employ the beneficiary as an innkeeper. 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. The director determined that the beneficiary would not be employed in the United States in a managerial or executive capacity and denied the petition.

The petitioner filed an appeal seeking to overturn the director's decision. However, the AAO rejected the appeal as untimely filed. The petitioner subsequently filed a motion on December 7, 2004 claiming that the AAO's determination that the appeal was untimely filed was incorrect. Upon review, the AAO granted the petitioner's motion, determining that the appeal was timely filed. Based upon a comprehensive review of the petitioner's record of proceeding, the AAO determined that the petitioner failed to establish eligibility to classify the beneficiary as a multinational manager or executive and dismissed the appeal.

The record shows that prior to the AAO's latest decision, the petitioner filed an identical motion on December 14, 2004 seeking again to review the AAO's initial rejection of the appeal based on the determination that it had been untimely filed. As previously stated, the AAO has already granted an identical motion as that currently before this office and has issued a decision based upon its comprehensive review of the record. Having considered the record in its entirety including the petitioner's submissions on appeal, the AAO need not reexamine the matter further, as no additional evidence or reasons for reconsideration have been submitted. Therefore, the AAO will affirm its most recent decision dismissing the appeal.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. As fully discussed in the AAO's decision dated December 22, 2005, the petitioner has not sustained that burden.

**ORDER:** The motion is dismissed. The AAO's decision dismissing the appeal is affirmed.

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<sup>1</sup> In the decision rejecting the appeal, the AAO determined that the appeal was received on August 29, 2003, which would have been 37 days after the denial was issued. However, a review of the date stamp on the Form I-290B shows that the appeal was received on August 25, 2003, which is within the 33-day time limit.