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FILE: [REDACTED]  
EAC 03 051 53189

Office: VERMONT SERVICE CENTER

Date: NOV 07 2007

IN RE: Petitioner:  
Beneficiary:

[REDACTED]

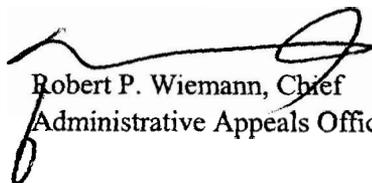
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based petition. The petitioner filed an appeal with Administrative Appeals Office (AAO), which the AAO dismissed. The AAO granted a subsequent motion to reopen and reconsider and affirmed the denial of the petition in a decision dated February 22, 2007. The matter is now before the AAO again on a motion to reconsider. The motion will be rejected.

The petitioner filed the instant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of New Jersey that is engaged in importing, exporting, and distributing scanners and computer parts. The petitioner seeks to employ the beneficiary as its president.

The director denied the petition concluding that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. On appeal, the petitioner challenged the director's decision that the beneficiary's proposed employment would not be primarily managerial or executive in nature.

In a June 1, 2005 decision, the AAO dismissed the appeal concluding that the limited and inconsistent documentary evidence offered by the petitioner with respect to the beneficiary's proposed employment and its staffing levels precluded the finding that the beneficiary would be primarily employed as a manager or executive. The AAO specifically noted a lack of evidence detailing the beneficiary's managerial or executive job duties, as well as discrepancies in the workers purportedly employed subordinate to the beneficiary. The AAO further observed that the petitioner had not established its ability to pay the beneficiary's proffered annual wages at the time of filing. The AAO granted the petitioner's subsequent motion and affirmed the denial of the petition on these grounds in a decision dated February 22, 2007.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that any motion to reopen or reconsider an action by United States Citizenship and Immigration Services (USCIS) be filed within 30 days of the decision that the motion seeks to reopen or reconsider, except that failure to file before this period expires may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the control of the petitioner. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a USCIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center.

The AAO's previous decision was issued on February 22, 2007. Counsel for the petitioner filed the instant motion on May 18, 2007, nearly three months later. Counsel states in his cover letter that "there was a delay in getting this out" due to a death in the family. No other explanation is provided for filing the motion, which consists of a one and one-half page letter from the petitioner, nearly two months beyond the 30-day filing deadline. As a matter of discretion, the petitioner's failure to file the motion within the period allowed will not be excused as either reasonable or beyond the control of the petitioner. Accordingly, the motion will be rejected as untimely filed.

The AAO notes that had the motion be timely filed, it would be dismissed, as it does not meet the requirements for a motion to reopen or motion to reconsider.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The motion consists of a letter dated April 20, 2007, from the petitioner's administrative director, who provides an outline of the beneficiary's job duties. There is no reference made to the findings made in the AAO's most recent decision and the specific deficiencies remarked upon therein, no new facts provided, and no reasons stated for reconsideration. The petitioner has had ample opportunity to provide a position description for the beneficiary. The evidence submitted was previously available and could have been discovered or presented in the previous proceedings. Therefore, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

Although counsel has submitted a motion entitled "Motion to Reconsider," counsel does not submit any document that would meet the requirements of a motion to reconsider. Counsel does not state any reasons for reconsideration nor cite any precedent decisions in support of a motion to reconsider. Counsel does not argue that the previous decisions were based on an incorrect application of law or USCIS policy.

Finally, it should be noted for the record that, unless CIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

**ORDER:** The motion is rejected as untimely filed.