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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

B4

File: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUN 16 2009
SRC 07 800 26609

IN RE: Petitioner: [REDACTED]
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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner, a Maryland corporation that is engaged in the hotel business, seeks to employ the beneficiary as its director of international sales. 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 petitioner electronically filed Form I-140, Immigrant Petition for Alien Worker, on July 31, 2007. The instructions for electronically filing Form I-140 state:

The required initial evidence must be received by the Service Center within seven business days of e-Filing the Form. If you do not submit the required initial evidence in the requisite time period, you will not establish a basis for eligibility, and we may deny your petition or application.

The record indicates that the petitioner did not file the required initial evidence in support of the Form I-140 until August 17, 2007, eleven business days after the e-filing of the Form I-140.

The director denied the petition on June 26, 2008, determining that because the petitioner has failed to provide the required initial evidence within 7 days of electronically filing the Form I-140, the petitioner has not established eligibility for the benefit sought in the present matter.

On the Form I-290B, Notice of Appeal or Motion, filed on July 28, 2008, counsel for the petitioner does not dispute that the filing of the initial evidence was late. However, counsel explains that the tardiness of petitioner's filing was due to the confusion surrounding the July 2007 Visa Bulletin. Counsel requests that the U.S. Citizenship and Immigration Services (USCIS) exercise its discretion, waive the late filing of the supporting documentation, and adjudicate the petition on the merits.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

In this instance, the petitioner has not identified as a basis for the appeal, nor has the AAO found, an erroneous conclusion of law or a statement of fact in the director's decision. The AAO notes that it is within the director's discretion, as provided in the instructions for filing the Form I-140, to deny the petition on the basis of the late filing of evidence.¹ Under these circumstances, the regulations mandate the summary dismissal of the appeal.

¹ As the director correctly noted, the instructions on the applications and petitions are incorporated into the regulations providing for the filing of the requisite forms and supporting evidence, pursuant to 8 C.F.R. §§103.2(a)(1) and 103.2(b)(1).

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. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.