

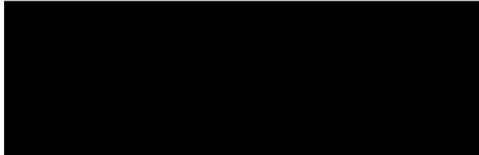
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B4

DATE: APR 27 2012

OFFICE: TEXAS SERVICE CENTER

FILE: 

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion will be rejected as untimely filed.

The petitioner, a retail and wholesale florist, seeks to employ the beneficiary as a store manager and flower designer at its San Juan, Puerto Rico location. 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 denied the petition based on the following grounds of ineligibility: (1) failure to establish that the beneficiary's employment abroad was within a qualifying managerial or executive capacity, and (2) failure to establish that the beneficiary's proposed employment with the U.S. entity would be within a qualifying managerial or executive capacity.

On March 29, 2010 the AAO dismissed the appeal on the same grounds and on two additional grounds.

The regulation at 8 C.F.R. § 103.5(a) states that any motion to reopen a proceeding before the service filed by an applicant or petitioner, 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 way beyond the control of the applicant or petitioner.

The AAO issued the decision on March 29, 2010 and gave notice to the petitioner that it had 30 days to file a motion. Although counsel dated the Form I-290B April 30, 2010, it was not received by the service center until May 4, 2010, or 34 days after the decision was issued. Accordingly, the motion was untimely filed.

The petitioner did not provide any information as to why it failed to file the motion in the required time period. 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 rejected as untimely filed.

ORDER: The motion to reopen is rejected as untimely filed.