

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: APR 18 2013 OFFICE: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

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:

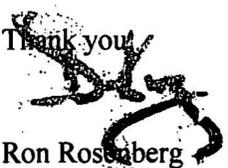
[REDACTED]

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 law was inappropriately applied by us in reaching our 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the petitioner's preference visa petition. Upon further review of the record, the director determined that the petitioner did not qualify for the benefit sought and therefore issued a notice of intent to revoke. The director subsequently revoked approval of the petition and the petitioner appealed the matter to the Administrative Appeals Office (AAO). The AAO rejected the appeal as untimely filed. The matter later came before the AAO on motion to reopen and reconsider, whose dismissal resulted in the petitioner's filing of the instant and second motion. Accordingly, the matter is now before the AAO on a motion to reconsider, which the AAO will also dismiss.

The petitioner is a California corporation that seeks to employ the beneficiary as its president. 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 concluding that the petitioner submitted contradictory supporting evidence and failed to establish that the beneficiary would be employed in a managerial or executive capacity. The petitioner appealed the decision disputing the director's findings. The AAO rejected the appeal based on its untimely filing.

In its August 8, 2012 decision, the AAO found that the district court case cited by counsel was not on point with the current subject matter and rejected counsel's uncorroborated assertion claiming that neither he nor the petitioner had received the director's decision revoking the petition. The AAO also relied on precedent BIA case law establishing that a courier's untimely delivery of the appeal would not serve to excuse the untimely filing of the appeal. Finally, with regard to the motion to reconsider, the AAO concluded that the petitioner failed to cite pertinent precedent decisions establishing that the decision to reject the untimely filed appeal was an incorrect application of law or Service policy.

In support of the current motion to reconsider, counsel cites *Irigoyen-Briones v. Holder*, 644 F.3d 943 (9th Cir. 2011), another district court case. In that case, the court remanded the matter of an untimely filed appeal, which dealt with an individual's deportation, back to the Board of Immigration Appeals (BIA) for further consideration, concluding that the BIA committed legal error by refusing to review the matter due to lack of jurisdiction. The court cited *Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006), as an example of a prior BIA decision where the BIA certified a matter back to itself *sua sponte* and excused the late filing of an appeal based on the determination that "exceptional circumstances" caused the untimely filing.

The AAO finds that the facts in *Irigoyen-Briones v. Holder* are sufficiently different from those in the matter at hand such that the court's ruling cannot be applied here. First, the AAO notes that the cited case dealt with a deportation proceeding where the individual was the directly affected party. The petitioner in the present matter, on the other hand, is a corporate entity which seeks an immigration benefit on behalf of a beneficiary who has no standing in this proceeding. See 8 C.F.R. § 103.3(a)(1)(iii)(B). Second, there is no precedent case law wherein the AAO reopened proceedings *sua sponte* in order to excuse the untimely filing of an appeal. While the AAO is expressly authorized to excuse the untimely filing of a motion to reopen "where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner," the AAO does not have the same discretionary authority in matters concerning the untimely filing of an appeal or a motion to reconsider. 8 C.F.R. § 103.5(a)(1)(i).

Thus, while the court's ruling in *Irigoyen-Briones v. Holder* hinges on the BIA's prior use of discretion to determine when the circumstances amount to "extraordinary" such that a late filing of an appeal may be excused, the same is not true with regard to an appeal that is filed untimely with the AAO. The AAO has no history of acknowledging rare or extraordinary circumstances, as there is no evidence that it was meant to have the discretionary authority to make such determinations. Therefore, regardless of the BIA's practices, any appeal that is untimely filed with the AAO will be accorded similar treatment.

When filing a motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

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 Service 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.

In the instant case, counsel does not cite any legal precedent or applicable law that would indicate an error on the part of the AAO in dismissing the petitioner's appeal. Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4), which states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

As a final note, the proper filing of a motion to reopen and/or reconsider does not stay the AAO's prior decision to dismiss an appeal or extend a beneficiary's previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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, the petitioner has not sustained that burden.

ORDER: The motion is dismissed.