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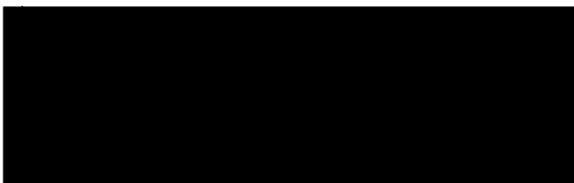
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FILE: WAC 04 027 50399 Office: CALIFORNIA SERVICE CENTER Date: DEC 28 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

for *Michael T. Kelly*
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a real estate investment firm that seeks to employ the beneficiary as a part-time accountant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b). The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation. The AAO affirmed the director's findings.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before Citizenship and Immigration Services (CIS). 8 C.F.R. § 103.5(a)(1)(i). A motion to reopen or reconsider must be filed within 30 days after service of the unfavorable decision upon the affected party. The regulation at 8 C.F.R. § 103.5(a)(1)(i) states:

[A]ny motion to reconsider an action by the Service [CIS] filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. 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 the delay was reasonable and was beyond the control of the applicant or petitioner.

If the adverse decision was served by mail, an additional three-day period is added to the 30-day period. 8 C.F.R. 103.5a(b).

As stated at 8 C.F.R. § 103.5(a)(1)(iii)(E), a motion must be "submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction." In this case, the California Service Center is the office maintaining the pertinent record.

Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's motion does not meet applicable requirements because it was not timely filed. The record reflects the following facts. On January 11, 2006, the AAO mailed its decision to the petitioner. The petitioner attempted to file the motion with the AAO, where it was received, with fee, on February 13, 2006. The AAO correctly returned the motion and fee to counsel, with a letter noting that the service center is the correct location for filing. The California Service Center received the motion on February 23, 2006, which is 43 days after the mailing of the decision that is the subject of the motion. Neither counsel nor the petitioner presents any evidence for CIS to consider regarding the delay in timely filing the motion. 8 C.F.R. § 103.5(a)(1)(i). Accordingly, the motion will be dismissed as untimely filed.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The motion is dismissed. The previous decision of the AAO, dated January 11, 2006, is affirmed.
The petition is denied.