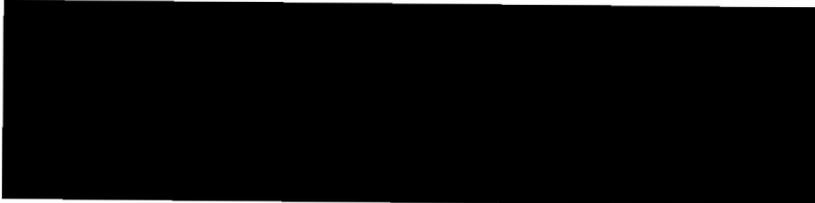


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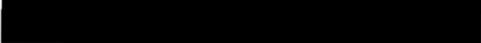


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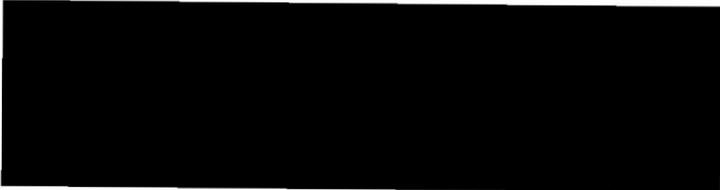


File: EAC 06 176 52533 Office: VERMONT SERVICE CENTER Date: **JUN 02 2008**

IN RE: Petitioner: 
Beneficiary: 

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)

IN 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 denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. As the matters submitted as an appeal were filed too late to be considered as such, the AAO will reject them as outside its jurisdiction. However, because the content of these matters merits consideration as a motion, they will be remanded to the director for adjudication on the merits as a motion, as required by the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

The petitioner is a privately-held global information technology solutions firm that seeks to employ the beneficiary as assistant manager, marketing. The petitioner, therefore, 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 matters that the petitioner filed as an appeal contest the director's findings and include evidence not previously presented.

There is a limited time within which appellate matters must be filed in order to come under the AAO's jurisdiction for review. The regulation at 8 C.F.R. § 103.3(a)(2)(i) states that "[t]he affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision." If the director's decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

However, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii).

In the present case, the director issued the decision denying the petition on June 29, 2007. The record reflects that matters submitted as an appeal were filed on August 6, 2007, or 38 days after the denial notice was issued. Because these matters were filed too late for consideration as an appeal, the AAO must reject them from its consideration. However, as their content merits consideration as a motion, they must be adjudicated as such, and the director must issue a new decision based upon that adjudication. These actions are required by the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2), which states:

If an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) of this part or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The AAO will (1) reject as untimely filed the matters submitted as an appeal, and (2) remand them to the service center for adjudication on the merits as a motion and for entry of new decision based upon that adjudication.

ORDER: The matters submitted to the AAO are (1) rejected as an appeal, and (2) remanded to the service center for adjudication as a motion and entry of a new decision based thereon.