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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

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FILE: SRC 02 244 51783 Office: TEXAS SERVICE CENTER Date: OCT 08 2009

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)

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. On its own motion, the AAO reopened the matter and issued a request for further evidence. Upon review of the information submitted in response to the request for evidence, the AAO affirmed its prior decision denying the petition. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a U.S. airline that owns and operates Learjets and Gulfstream G-159 turbo prop aircraft, and provides charter and air cargo services, as well as aircraft services to military and defense contractors. The petitioner seeks to extend the employment of the beneficiary as an aircraft pilot in command 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). Upon review of the evidence in the record, including the evidence submitted in response to the AAO's request, the AAO determined that the petitioner had not established that the proffered position qualifies as a specialty occupation. The AAO further determined that the record did not include the necessary documentation to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before United States Citizenship and Immigration Services (USCIS). 8 C.F.R. § 103.5(a)(1)(i). 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). 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 Administrative Appeals Office mailed its decision to the petitioner on September 21, 2007. USCIS received the petitioner's motion 39 days later on October 30, 2007. Neither counsel nor the petitioner presents any evidence for USCIS 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 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.