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U.S. Citizenship
and Immigration
Services



MAR 30 2007

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FILE: LIN 04 021 52713 Office: NEBRASKA SERVICE CENTER Date:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 reconsider. The motion will be dismissed.

The petitioner is an information technology and solutions company, and seeks to employ the beneficiary as a computer software engineer. It endeavors to classify him 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 ground that the proffered position is not a specialty occupation. The AAO dismissed a subsequent appeal (appeal filed September 7, 2004) pursuant to 8 C.F.R. § 103.3(a)(1)(v) for failure of the petitioner to specify on appeal how the director made any erroneous conclusion of law or statement of fact in denying the petition, and failure to present any additional evidence to overcome the decision of the director.

Subsequent to the petitioner's filing of the notice of appeal on September 7, 2004, the petitioner obtained counsel for representation in the appeal process. Counsel then filed a second notice of appeal on September 20, 2004. That appeal was properly rejected by Citizenship and Immigration Services (CIS) and returned to counsel with the filing fee as an appeal was presently pending. The AAO issued a decision on March 18, 2005 summarily dismissing the petitioner's appeal for the reasons stated above. On October 27, 2005, the petitioner filed a motion to reconsider the decision of the AAO.

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). If the adverse decision was served by mail, an additional three days is added to the proscribed 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 March 18, 2005. The petitioner filed a motion to reopen and reconsider the AAO decision on October 27, 2005 (223 days after the AAO decision). The AAO may, in its discretion, excuse the late filing of a motion when it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i). In this instance, the late filing of the motion to reconsider (223 days subsequent to the adverse decision of the AAO) was not reasonable, nor does the record establish that the late filing was beyond the control of the petitioner. 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 sustained that burden.

ORDER: The motion is dismissed.