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U.S. Citizenship
and Immigration
Services

D2

File: WAC 07 148 51658 Office: CALIFORNIA SERVICE CENTER Date: **FEB 02 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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued the decision on October 4, 2007. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. The appeal was received by the United States Citizenship and Immigration Services (“USCIS”) on Wednesday, November 7, 2007, or 34 days after the decision was issued. Accordingly, the appeal was untimely filed.

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.

An untimely filed appeal must meet specific requirements to be treated as a motion. The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Furthermore, 8 C.F.R. § 103.5(a)(3) requires that 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 USCIS policy.

A review of the record indicates that the appeal does not meet either of these requirements. On appeal, counsel for the petitioner states that the beneficiary is eligible for the classification sought. The petitioner states that it is in “the field of software development and IT consulting and [it has a] number of ongoing in[-]house projects [and] ongoing requirement[s] from its client [REDACTED]. [I]n anticipation of need of [sic] these project[s] petitioner is seeking to hire the beneficiary to work in [REDACTED]” The petitioner submits copies of contracts between the petitioner and [REDACTED] however, the beneficiary is not indicated in any of these contracts. The petitioner does not provide any new facts to be considered in the reopened proceeding, nor does the petitioner provide affidavits or other documentary evidence. Furthermore, the petitioner does not state a clear reason for reconsideration and, more importantly, fails to cite to any pertinent precedent decision to establish that the decision was based on an incorrect application of law or USCIS policy. For these reasons, the appeal may not be treated as a motion to reopen or reconsider.

As the appeal was untimely filed and the petitioner has failed to provide any new facts, evidence, or pertinent precedent decisions that support a motion to reopen or motion to reconsider, the appeal must be rejected.

ORDER: The appeal is rejected as untimely filed.