

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



07

File: SRC 03 131 52472 Office: TEXAS SERVICE CENTER Date: **APR 05 2007**

IN RE: Petitioner: 
Beneficiary: 

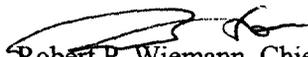
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 nonimmigrant visa petition was denied by the Director, Texas Service Center, and a subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be rejected as untimely filed.

The petitioner states that it operates as a bakery and confectionery. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its Manager – Confectionery Division, pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The director denied the petition on September 15, 2003, concluding that the petitioner did not establish that the beneficiary will be employed in a primarily managerial or executive capacity.

The AAO summarily dismissed a subsequently filed appeal on February 7, 2005, and properly advised the petitioner of the requirements for filing a motion to reopen or reconsider.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that any motion to reopen or reconsider an action by U.S. Citizenship and Immigration Services (ISCIS) be filed within 30 days of the decision that the motion seeks to reopen or reconsider, except that failure to file before this period expires may be excused in the discretion of CIS where it is demonstrated that the delay was reasonable and was beyond the control of the petitioner.

The instant motion to reopen was filed on December 19, 2005, more than ten months after the adverse decision was issued by the AAO. Counsel for the petitioner states that the purpose of the motion to reopen is to verify the date on which the AAO dismissed the appeal. Counsel notes that the petitioner received two notices of intent to deny in connection with a subsequently filed Form I-140 Immigrant Petition, which provided conflicting dates for the AAO's decision. Counsel requests that the AAO confirm the date of denial and verify whether a denial notice was sent to "MVK Enterprises Inc. (d.b.a. Hot Breads)" or to the company's former attorney.¹

As a matter of discretion, the petitioner's failure to file the motion within the period allowed will not be excused as either reasonable or beyond the control of the petitioner. Accordingly, the motion will be rejected as untimely filed.

ORDER: The motion is rejected.

¹ The record shows that the AAO's decision was issued on February 7, 2005, and mailed to the petitioner, In Foods Inc. d.b.a. Hotbreads, and to the petitioner's former attorney of record, Bhavani Nirmal, on that date.