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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 24 2002

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was approved by the Director, California Service Center. Upon subsequent review, the director properly issued a notice of intent to revoke, and ultimately revoked the approval of the petition on May 5, 2000. The matter is now before the Associate Commissioner on appeal. The case will be remanded for further consideration.

The regulation at 8 C.F.R. 205.2(d) indicates that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. The record indicates that the notice of revocation was mailed on May 5, 2000. On May 25, 2000 the Service received a document entitled motion to reconsider regarding the revocation of the petition. The documentation did not include a notice of appeal. There is insufficient evidence in the record to indicate that the director reopened the proceeding to reconsider her decision.

On June 2, 2000 the Service received a Form I-290B, Notice of Appeal with a brief and documentation attached. This appeal is 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 as described in 8 C.F.R. 103.5(a)(2), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

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. Review of the record indicates that both the motion to reconsider submitted on May 25, 2000 and the appeal submitted on June 2, 2000 meet this requirement.

Although the petition will be remanded, examination of the record reveals issues that must be addressed upon remand. In this case, it is not clear that the beneficiary's duties are primarily managerial or executive in nature. The petitioning company's description of the beneficiary's duties is vague and does not provide a comprehensive understanding of the beneficiary's daily activities. Further, there are questions regarding the petitioning company's qualifying relationship with the overseas entity. Further evidence must be provided to establish the qualifying relationship in light of the investigation by the American Institute in Taipei, Taiwan and the petitioner's subsequent explanations regarding the investigation.

Accordingly, this matter will be remanded for the purpose of a decision on the motion to reconsider.

ORDER: The petition is remanded to the director for further action in accordance with the foregoing.