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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass. Ave., 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 98 082 53716 Office: CALIFORNIA SERVICE CENTER Date: APR 18 2003

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)

ON 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. The petitioner appealed that decision to the Administrative Appeals Office (AAO). The appeal was dismissed. The matter is now before the AAO on motion to reopen and reconsider. The motion will be rejected as untimely filed.

The petitioner is a California corporation that claims to be engaged in soft drink production, sale, investment and trade. The petitioner further claims to be a subsidiary of SELKO, located in Russia. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The director denied the petition because she determined that the petitioner had failed to establish that a qualifying relationship exists between it and a foreign entity. The director also determined that the petitioner failed to establish that the beneficiary had been and will be employed in a managerial or executive capacity.

On appeal, counsel maintained that the petitioner is eligible for the benefit sought. The Associate Commissioner dismissed the appeal, affirming the determinations previously made by the director. The petitioner has since submitted a motion to reconsider and reopen the Associate Commissioner's dismissal.

However, 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part, that a motion to reopen or reconsider must be filed within 30 days of the decision it seeks to reopen or reconsider.

In the instant case, the Associate Commissioner's dismissal was issued on October 10, 2000. The petitioner's motion was received by the Bureau on November 15, 2000, 36 days after the dismissal of the appeal. The motion was untimely filed and therefore must be rejected.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The motion is rejected.