

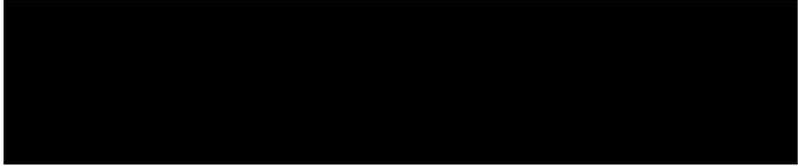


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U.S. Department of Justice
Immigration and Naturalization Service

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



FILE: EAC 99 213 52762 OFFICE: VERMONT SERVICE CENTER

DATE: **JAN 22 2002**

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)

IN BEHALF OF PETITIONER:



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 nonimmigrant visa petition was denied by the Director, Vermont Service Center. The director's decision to deny the petition was affirmed by the Associate Commissioner for Examinations on appeal on May 24, 2000. The matter is now before the Associate Commissioner on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is engaged in the import, export, sales, construction, investment and general services. It seeks to continue the employment of the beneficiary temporarily in the United States as its manager. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity. The Associate Commissioner affirmed these determinations on appeal.

Counsel for the petitioner submits a notice indicating that it is filing a motion to reopen and reconsider. The notice is date stamped July 12, 2000. Counsel also indicates that a brief and evidence would be submitted to the Administrative Appeals Unit within 30 days. As of this date neither a brief nor evidence has been submitted.

The motion is dismissed as untimely filed. Counsel for the petitioner submitted the notice of the motion to reopen and consider almost two weeks out of time. Further, the motion to reopen and reconsider is not supported by any new facts or reasons for reconsideration and is not supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law.

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

8 C.F.R. 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

8 C.F.R. 103.5(a)(2) states, in pertinent part:

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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

As noted above the notice of motion to reopen and reconsider was submitted untimely and without any new facts or any reasons indicating that the previous decision was based on an incorrect application of law or Service policy.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. 8 C.F.R. 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the Associate Commissioner will not be disturbed.

ORDER: The motion is dismissed.