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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

PUBLIC COPY

[redacted]

JAN 30 2003

File: LIN 01 161 53336 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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: [redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 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 that 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, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected as improperly filed. The case will be remanded for further consideration.

The petitioner is engaged in providing engineering services for the automotive industry. It seeks to employ the beneficiary temporarily in the United States as its design engineer. The director determined that the petitioner had not established that the beneficiary possesses specialized knowledge.

8 C.F.R. 103.3(a)(2)(i) states, in pertinent part:

> The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made **within 30 days** after service of the decision. (Emphasis added.)

8 C.F.R. 103.2(a)(7)(i) states, in pertinent part:

> An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 of this chapter, shall be regarded as properly filed when so stamped, if it is properly signed and executed **and the required filing fee is attached** or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. (Emphasis added.)

The denial notice in the instant case was sent to the petitioner on August 29, 2001. The petitioner initially filed the appeal on September 18, 2001. However, the appeal was returned with a note from the Service informing the petitioner that the proper fee was not submitted and that therefore the appeal cannot be accepted. The appeal and proper fee were received by the Service on October 5, 2001, 37 days after the denial had been issued. The appeal was untimely filed and therefore must be rejected.

However, 8 C.F.R. 103.3(a)(2)(v)(B)(2) states the following:

> 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.

8 C.F.R. 103.5(a)(2) states, in pertinent part, that 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)(3) 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.

In the instant case, petitioner submitted evidence and information that had not been previously provided for Service review. Accordingly, the matter will be remanded for further consideration.

ORDER: The case is remanded for further action and consideration.