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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS; AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

APR 25 2003

File: EAC-01-057-53396 Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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)

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ON BEHALF OF PETITIONER:

[redacted]

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 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 which originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

for Robert P. Wiemann, Director
Adminisrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Eastern Service Center. The matter is now before the Administrative Appeals Office (AAO) on motion. The petition will be remanded to the director for entry of a new decision consistent with the foregoing.

The petitioner is an arabic internet provider. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president (General Director).

The director denied the petition having concluded that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity. Counsel did not appeal the director's decision, dated February 11, 2002. Instead, counsel submitted a motion to reconsider, which the director received on March 18, 2002.

The AAO has jurisdiction to consider an appeal that is filed pursuant to the denial of a petition. See 8 C.F.R. 103.3 The appropriate form to be used for an appeal in this type of petition is the Notice of Appeal (Form I-290B). Instead of filing a Form I-290B, however, counsel filed a motion to reconsider, which is permitted under § 103.5. As no Form I-290B has been filed, the AAO does not have jurisdiction to consider the motion to reconsider.

Accordingly, the record shall be remanded to the director to consider the petitioner's evidence on motion. The director will determine whether the petitioner has met the eligibility requirements under Section 101(a)(15)(L) of the Act, and may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The petition is remanded to the director to consider the motion to reconsider.