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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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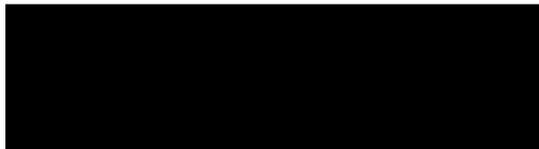
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DATE: JAN 10 2012 Office: CALIFORNIA SERVICE CENTER 

IN RE: Petitioner: 

PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the
Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be dismissed.

The regulation at 8 C.F.R. § 103.5(a)(i) provides, in pertinent part:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, 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 was beyond the control of the applicant or petitioner.

If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). Service records reveal that the AAO's notice was mailed to the petitioner at his address of record and to counsel at her address of record. The petitioner has not demonstrated that he or counsel advised the AAO of any change of address. The AAO dismissed the petitioner's appeal on July 8, 2010. The regulation at 8 C.F.R. § 103.2(a)(7)(i) provides that an application is stamped with date of actual receipt and is considered properly filed as of that date. While counsel dated the Form I-290B Notice of Appeal or Motion August 1, 2010, the California Service Center did not receive the motion until September 28, 2010, 82 days after the date of the AAO's decision.

In light of the above, the motion is untimely. Counsel requests that the AAO exercise its discretion and accept the untimely motion because the delay was due to securing information from the United Kingdom. On November 17, 2009, the director advised the petitioner in the notice of denial that the record lacked evidence of the source of the gifted funds. On appeal, filed December 18, 2009, counsel stated that the petitioner was "in the process of obtaining the financial records (*for the last 10 years*) of [the petitioner's uncle] who currently resides in the United Kingdom to show that the money in question was obtained through legal investments transaction and multiplied over the years."

The AAO noted in its July 8, 2010 decision, issued over seven months after the petitioner filed the appeal, that the petitioner had not supplemented the appeal with evidence from the United Kingdom. Moreover, the only foreign document submitted on motion is a letter from the Managing Director of Caversham dated June 11, 2010. Counsel does not explain why this document was not available to file with a timely motion. The record also contains letters from physicians dated May and June 2010 relating to counsel's health. Once again, these letters do not explain why counsel could not file a timely motion by August 10, 2010.

In light of the above, the petitioner has not demonstrated that the failure to file a timely motion was beyond the petitioner's control or due to U.S. Citizenship and Immigration Services (USCIS) error.

As the motion was untimely filed, the motion must be dismissed.

ORDER: The motion is dismissed.