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U.S. Citizenship
and Immigration
Services

B4

File: [REDACTED] Office: TEXAS SERVICE CENTER Date: MAY 04 2006
SRC 04 080 50579

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

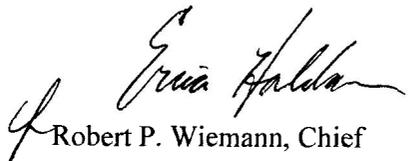
Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

COURTESY COPY TO:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based visa petition. The Administrative Appeals Office (AAO) subsequently rejected an appeal pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1), without rendering a decision. The matter is now before the AAO on an "amended notice of appeal" or in the alternative a motion to reopen and reconsider. The motion will be rejected.

The petitioner seeks to classify the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

The director denied the petition on May 11, 2005. On June 13, 2005, counsel for the beneficiary submitted a Form G-28, Entry of Appearance of Attorney or Representative and a Form I-290B, Notice of Appeal, both indicating that he represented the beneficiary. In accordance with 8 C.F.R. § 103.3(a)(1)(iii)(B), "affected party" means (in addition to the Service) the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. Inasmuch as neither the beneficiary nor his representative had standing to file an appeal in this matter, the AAO rejected the appeal as improperly filed. *See* 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The petitioner has now filed an amended notice of appeal of the director's decision or in the alternative a motion seeking to reopen and reconsider the appeal that was rejected by the AAO. Counsel's amended notice of appeal was filed November 7, 2005, more than five months subsequent to the director's decision on May 11, 2005.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a Citizenship and Immigration Services (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office. In this matter, as the amended notice of appeal was filed more than five months subsequent to the director's decision, the notice was not filed timely.

Moreover, as the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reopened in this proceeding. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision in this matter. Because the director rendered the disputed decision, the AAO has no jurisdiction over this motion and the motion must be rejected.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, 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. Again, the official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

Of note, counsel for the beneficiary submits documentation on appeal that had not been submitted to the director prior to her adjudication. However, the director had requested this information prior to rendering her decision. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Of further note, where, as here, a petitioner was put on notice of a deficiency in the evidence and had been given an opportunity to respond to that deficiency, the AAO would not have accepted this evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

As the AAO has no jurisdiction over this motion, the motion must be rejected.

ORDER: The motion is rejected.