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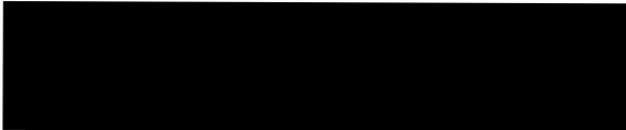
File: SRC 05 130 50869 Office: TEXAS SERVICE CENTER Date: Nov 06 2006

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:



**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 of the Texas Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(I).

The petitioner is a Florida corporation and is allegedly a design business.<sup>1</sup> The petitioner seeks to extend the employment of the beneficiary as its president as an L-1A 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 after concluding that the petitioner failed to establish that (1) the beneficiary will be employed primarily in a managerial or executive capacity; or (2) that the petitioner had been doing business during its first year in operation.

The regulation at 8 C.F.R. § 103.3(a)(2) requires an affected party to file the complete appeal within 30 days after service of the decision, or, in accordance with 8 C.F.R. § 103.5a(b), within 33 days if the decision was served by mail. The record indicates that the decision of the director was mailed to counsel to the petitioner on Thursday, July 28, 2005. Counsel to the petitioner filed an appeal with the Texas Service Center on Wednesday, August 31, 2005, 34 days after the decision was mailed.

Thus, the appeal was not timely filed and must be rejected on these grounds pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(I).

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 as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case. 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.<sup>2</sup>

**ORDER:** The appeal is rejected.

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<sup>1</sup>According to Florida state corporate records, the petitioner's corporate status in Florida was voluntarily "dissolved" on February 8, 2006. Therefore, since the corporation may not carry on any business except that necessary to wind up and liquidate its affairs, the company can no longer be considered a legal entity in the United States. *See* Fla. Stat. 607.1405 (2006). Therefore, as this clearly and unequivocally renders the petitioner ineligible for the classification sought, the petition could not be approved for this additional reason if it were not being rejected.

<sup>2</sup>Finally, it must be noted that the petitioner fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Since 8 C.F.R. § 103.3(a)(1)(v) requires the AAO to summarily dismiss an appeal when the appellant fails to identify specifically any erroneous conclusion of law or statement of fact, the AAO would be obligated to summarily dismiss the current appeal if it were not being rejected.