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File: SRC 05 156 51002 Office: TEXAS SERVICE CENTER Date: NOV 30 2006

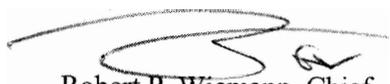
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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)

IN BEHALF OF PETITIONER:  
[Redacted]

**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 Texas corporation allegedly engaged in the business of manufacturing, designing, and selling apparel.<sup>1</sup> The petitioner seeks to employ the beneficiary as its president to open a new office 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 the intended United States operation, within one year of approval of the petition, will support a managerial or executive position.

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 faxed to and received by counsel to the petitioner on Saturday, July 2, 2005. The director used the fax number provided by counsel to the petitioner in the Form I-907, Request for Premium Processing Service, which was identified as the preferred form of communication. Counsel to the petitioner filed an appeal with the Texas Service Center on Tuesday, August 2, 2005, 31 days after the decision was served upon counsel to the petitioner by fax.

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).<sup>2</sup>

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.

**ORDER:**                   The appeal is rejected.

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<sup>1</sup>It should be noted that, according to Texas state corporate records, the petitioner's corporate status in Texas is not in good standing. Therefore, as the State of Texas has forfeited the petitioner's corporate privileges, this calls into question the petitioner's continued eligibility for the benefit sought.

<sup>2</sup>It should be noted that 8 C.F.R. § 103.3(a)(1)(v) requires an officer to whom an appeal is taken to summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. In this matter, the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding. Therefore, the appeal would be summarily dismissed if it were not being rejected for the reason given in this decision.