



U.S. Citizenship  
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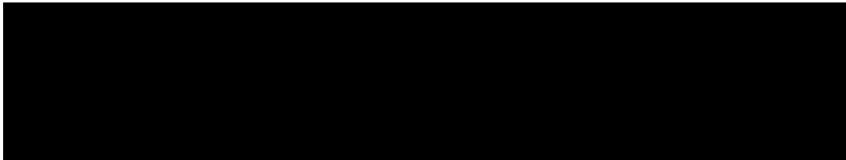
File: SRC 01 106 54405 Office: TEXAS SERVICE CENTER Date:

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)

ON 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, Texas Service Center, denied the petition for a nonimmigrant visa. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The AAO affirmed that decision on the petitioner's first motion to reopen and reconsider, and subsequently rejected a second motion to reconsider as untimely filed. The matter is again before the AAO on motion to reopen. The motion will be dismissed.

The petitioner is engaged in the purchase and export of automobile parts. It seeks to extend its authorization to employ the beneficiary, its general manager, 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 determined that the petitioner failed to establish that the beneficiary has been or will be employed in a primarily managerial or executive capacity.

The AAO affirmed the director's decision on appeal, and on a subsequently filed motion to reopen and reconsider. In its decision dated November 17, 2003, the AAO properly advised the petitioner that any subsequent motion must be filed with the office that originally decided the case, in accordance with 8 C.F.R. § 103.5(a)(1)(iii)(E).

The petitioner filed a second motion to reopen on January 6, 2004, 50 days after the AAO's decision was issued. In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days after service of the unfavorable decision, 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. The AAO rejected the motion as untimely filed in a decision dated January 18, 2005.

On this third motion, which was timely filed on February 10, 2005, counsel asserts that the petitioner's previous motion to reconsider was mailed with appropriate fees on December 16, 2003, and that a courier service attempted to deliver the package to the AAO on December 17, 2003. Counsel states the package containing the motion was returned to his office undelivered on December 29, 2003, and that he subsequently re-filed the motion with the Texas Service Center, where it was received and date-stamped as properly filed on January 5, 2004. Counsel asserts: "The petitioner complied with all requirements and the motion would have been timely filed [sic] if filed with the [Texas Service Center] rather than the AAO, and thus is at no fault of the petitioner."

In support of the motion, counsel submits documentation which confirms that counsel attempted to file the motion with the AAO on December 17, 2003. Counsel also submits a brief discussing the merits of the petitioner's case, a copy of the previous motion to reconsider dated December 15, 2003, and supporting documentation in support of the petitioner's claim that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United

States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

Upon review, although counsel now submits new evidence explaining and documenting the reason for the late filing of the petitioner's previous motion to reopen, the AAO declines to find the delay in filing reasonable or beyond the control of the petitioner. The AAO specifically instructed the petitioner to file any subsequent motion to reopen or reconsider with the Texas Service Center, where the record of proceeding was maintained, and such requirement is clearly stated in the regulations. *See* 8 C.F.R. § 103.5(a)(1)(iii)(E).

As the motion to reopen filed on January 5, 2004 was properly rejected as untimely filed, the AAO need not and will not reopen the matter at this time in order to consider the merits of the petitioner's case. The motion will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The motion is dismissed.