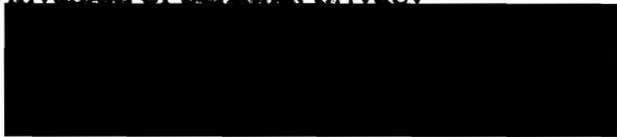




U.S. Citizenship  
and Immigration  
Services

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prevent clearly unwarranted  
invasion of personal privacy**



D7

File: SRC 05 105 50884 Office: TEXAS SERVICE CENTER Date: **JAN 29 2007**

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)

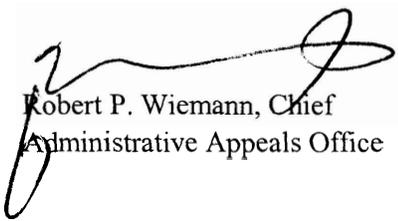
ON BEHALF OF PETITIONER:

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 nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary 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 petitioner, a Florida corporation, intends to operate a construction business. The petitioner claims that it is a branch office of [REDACTED] located in Cochabamba, Bolivia. The petitioner seeks to employ the beneficiary as the president/general manager of its new office in the United States for a three-year period.

The director denied the petition on April 27, 2005, concluding that the petitioner had not established: (1) that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity; or (2) that the petitioner would employ the beneficiary in a primarily managerial or executive capacity within one year of commencing operations in the United States.

On June 7, 2005, the petitioner filed an appeal seeking review of the director's decision. 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 appeal within 30 days after 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. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal.

The AAO notes that Form I-290B was initially submitted without the requisite filing fee on May 27, 2005, and rejected as improperly filed. The petitioner subsequently re-filed the form with the filing fee on June 7, 2005, 41 days after the director's decision was issued.<sup>1</sup> Consequently, the appeal in this matter was untimely filed. Any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Furthermore, the AAO notes that counsel indicated on Form I-290B, Notice of Appeal, that she represents the beneficiary. The only Form G-28, Notice of Entry of Appearance as Attorney or Representative, submitted by counsel was signed by the beneficiary. The beneficiary did not indicate that he was signing as an authorized representative of the petitioner, and the petitioner is not named on the Forms G-28 or Form I-290B. Thus, the record shows that counsel represents the beneficiary, not the petitioner.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states:

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<sup>1</sup> The AAO notes that the Form I-290B and fee filed on June 7, 2005 was also rejected by the director. The petitioner was advised to re-file the appeal on a new version of Form I-290B. The petitioner re-filed the appeal on the latest version of Form I-290B on June 15, 2005. The AAO would have accepted the appeal on the previous version of Form I-290B had it been timely filed by an affected party.

(B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Similarly, only an authorized party may maintain an appeal. 8 C.F.R. § 103.3(a)(2)(v) states:

*Improperly filed appeal—(A). Appeal filed by person or entity not entitled to file it-- (1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

Inasmuch as neither the beneficiary nor his representative has standing to file an appeal in this matter, the appeal must also be rejected as improperly filed, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A).

**ORDER:** The appeal is rejected.