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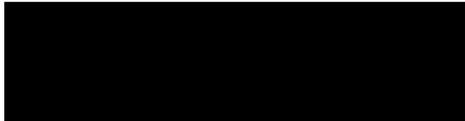
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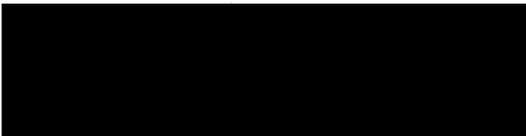
File: WAC 04 047 52791 Office: CALIFORNIA SERVICE CENTER Date: **MAY 01 2007**

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).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On August 18, 2004, the Director of the California Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on June 1, 2006, the AAO dismissed the appeal. On July 14, 2006, the petitioner filed a motion to reopen the AAO's decision with the California Service Center. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C) and (E), 103.5(a)(2), and 103.5(a)(4).

The petitioner filed this nonimmigrant petition seeking to extend the employment of 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 petitioner, a California corporation, claims a qualifying relationship with [REDACTED], located in Guangdong, China. The petitioner claims to be engaged in international trade. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner failed to establish (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the petitioner had been doing business as defined in the regulations. As indicated above, the AAO dismissed the subsequently filed appeal of the director's decision on June 1, 2006, and the petitioner moved to reopen the AAO's decision on July 14, 2006.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states in pertinent part that:

Any motion to reopen a proceeding before [Citizenship and Immigration Services (CIS)] filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of [CIS] where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

In this matter, the petitioner filed the instant motion with the California Service Center on July 14, 2006, or 43 days after the decision of the AAO. As the petitioner has not demonstrated that this delay was reasonable or was beyond its control, CIS may not excuse the late filing, and the motion must be dismissed for failing to meet the applicable requirements. 8 C.F.R. § 103.5(a)(4).¹

¹The record indicates that the petitioner attempted to file the instant motion directly with the AAO on July 5, 2006. The AAO returned the motion to the petitioner with a letter indicating that it should file the instant motion with the CIS office at which the petition was originally filed, i.e., the California Service Center. It is noted that the petitioner's attempt to file this motion directly with the AAO does not establish a receipt date of July 5, 2006. As clearly explained in the AAO's decision dated June 1, 2006, further inquiries regarding the matter should have been made to the California Service Center. Moreover, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E) clearly requires that this motion be filed at the office maintaining the record, i.e., the California Service Center, for forwarding to the official having jurisdiction, i.e., the AAO. Therefore, the receipt date for the instant motion was the day it was received by the California Service Center -- July 14, 2006.

In addition, the motion shall be dismissed for failing to meet two other applicable requirements. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." Section 103.5(a)(1)(iii)(E) requires that motions be submitted "to the office maintaining the record upon which the unfavorable decision was made." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Moreover, as explained above, the motion was originally submitted to the AAO, which is not the office maintaining the record upon which the unfavorable decision was made. Instead, the petitioner was obligated to file the motion with the California Service Center within the applicable timeframe. The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C) and (E), it must also be dismissed for this reason.

Finally, upon review, the AAO will dismiss the motion for failure to meet the applicable requirements set forth in 8 C.F.R. § 103.5(a)(2).

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that "[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." Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.²

In this matter, the petitioner presented no facts or evidence on motion that may be considered "new" under 8 C.F.R. § 103.5(a)(2) and that could be considered a proper basis for a motion to reopen. The petitioner's motion is based entirely on business growth after the filing of the initial petition. While such facts or evidence may not have been available previously, the growth of the petitioner's business after the filing of the instant petition is entirely irrelevant to this proceeding and is not a proper basis for a motion to reopen. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion will be dismissed.

Finally, it should be noted for the record that, unless CIS directs otherwise, the filing of a motion to reopen does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

²The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

Title 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.