



U.S. Citizenship
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Services

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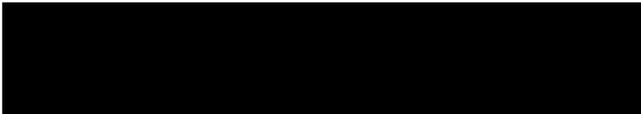
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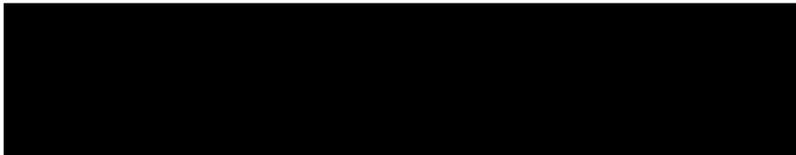
File: SRC 04 169 52691 Office: TEXAS SERVICE CENTER Date: **MAY 02 2007**

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 BENEFICIARY:



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, approved the nonimmigrant visa petition and certified the decision to the Administrative Appeals Office (AAO) for review. The AAO withdrew the director's decision and denied the petition. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed as untimely and improperly filed. 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(A), and 103.5(a)(4).

In order to properly file a motion to reconsider or reopen, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of the decision that the motion seeks to reconsider. If the decision was mailed, the motion 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 motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the AAO issued its decision on July 7, 2005. According to the date stamp on the motion to reconsider, it was received by CIS on December 15, 2005, over six months after the decision was issued.¹ Accordingly, the motion was untimely filed.

Additionally, the Form G-28, Entry of Appearance as Attorney or Representative, that was submitted for the record in support of the appeal was signed by the beneficiary, not by the petitioner or an authorized representative thereof. CIS regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). In this case, the Form G-28 that was submitted for the record was signed by the beneficiary in his personal capacity. While it is noted for the record that the beneficiary does appear to have been an agent for the petitioner, there is no evidence in the record that the beneficiary was legally authorized to sign as a representative on behalf of the petitioner with regard to the appeal before the AAO. Specifically, the Form G-28 submitted by counsel clearly limits his representation/appearance to the beneficiary, and nowhere is it indicated that the beneficiary signed the form in his capacity as president for the petitioner. In addition, counsel clearly limits his representation on the Form I-290B to the beneficiary.

An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(A)(1). As the beneficiary and his counsel are not recognized parties, counsel is not authorized to file an appeal. *Id.*; 8 C.F.R. § 103.3(a)(1)(iii)(B).

As the motion was untimely and improperly filed, the motion must be dismissed.

ORDER: The motion is dismissed.

¹ It is noted for the record that the motion was originally received by CIS on December 5, 2005. However, since the motion was not accompanied by the required fee, it was returned to counsel and was not properly filed until December 15, 2005.