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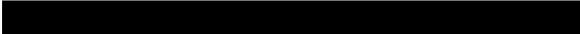
**U.S. Citizenship
and Immigration
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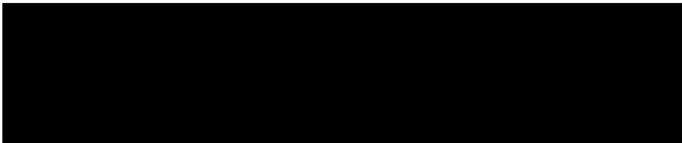


File: WAC 04 228 50276 Office: CALIFORNIA SERVICE CENTER Date: **SEP 06 2007**

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On July 6, 2005, the Director of the California Service Center denied the nonimmigrant visa petition. Counsel to the beneficiary appealed this denial to the Administrative Appeals Office (AAO), and, on November 6, 2006, the AAO rejected the appeal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I) as having been filed by a representative of an unrecognized party to the proceeding, i.e., the beneficiary. On January 3, 2007, a motion to reconsider the AAO's decision was filed 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), 103.5(a)(3), and 103.5(a)(4).

The petitioner [REDACTED] is allegedly a Nevada corporation engaged in the business of operating a coffee and refreshment kiosk. The petitioner seeks to extend the employment of the beneficiary as its 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 denied the petition after concluding, *inter alia*, that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity. As indicated above, the AAO rejected the subsequently filed appeal of the director's decision on November 6, 2006, and a motion for reconsideration of the AAO's decision was filed on January 3, 2007.

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

Any motion to reconsider an action by [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 reconsider.

In this matter, the instant motion was filed with the California Service Center on January 3, 2007, or 58 days after the decision of the AAO. Therefore, the motion must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).¹

¹Counsel asserts in the motion that he "did not receive notice of [the AAO's] denial until December 18, 2006. The notice was never sent to [his] office. Somehow it was sent to some other entity and eventually worked its way to [his] office." It must be noted that counsel's insinuation that the AAO's November 6, 2006 decision was improperly served, and that this extends the petitioner's time to move for reconsideration, is without merit. First, while the decision to reject the beneficiary's appeal dated November 6, 2006 was not sent to the beneficiary's counsel, this was appropriate because the beneficiary is not a recognized party to the proceeding. 8 C.F.R. § 103.2(a)(3). As the beneficiary and his representative are not recognized parties, counsel was not authorized to file the appeal and was not entitled to notice of the decision. 8 C.F.R. § 103.3(a)(1)(iii)(B); *see also* 8 C.F.R. § 103.2(b)(19). Furthermore, as the record does not contain a Form G-28 entering the appearance of an attorney or representative for the petitioner, the petitioner was unrepresented and, therefore, there was no attorney or representative to whom the AAO should have sent its decision. Counsel's assertion on motion that he has previously represented the petitioner in other contexts is not relevant to this matter. The regulations mandate that attorneys or representatives enter appearances by using Form G-28. 8 C.F.R. § 299.1; 8 C.F.R. § 292.4.

Second, the decision to reject the beneficiary's appeal was properly sent to the unrepresented petitioner at the address listed in the Form I-129, i.e., [REDACTED] 8 C.F.R. § 103.2(b)(19); 8

In addition, the motion shall be dismissed for failing to meet the requirement at 8 C.F.R. § 103.5(a)(1)(iii)(C). This regulations 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." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). As the regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements shall be dismissed, the instant motion must also be dismissed for this reason.

Finally, the AAO will dismiss the motion for failure to meet the applicable requirements set forth in 8 C.F.R. § 103.5(a)(3). The regulations at 8 C.F.R. § 103.5(a)(3) require motions to reconsider to "state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [CIS] policy." In this matter, counsel did not support its motion with any pertinent precedent decisions to establish that the AAO's rejection of an appeal signed by a representative of an unrecognized party, i.e., a beneficiary, was an incorrect application of law or policy. For this reason, the motion must also be dismissed pursuant to 8 C.F.R. § 103.5(a)(4) as the motion fails to meet applicable requirements.

Motions for the reopening or reconsideration 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. *See 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.

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).

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.

C.F.R. § 103.5a. The record does not contain any evidence that the petitioner had notified Citizenship and Immigration Services (CIS) that its mailing address had changed. Therefore, the AAO's decision was served upon the proper recipient, i.e., the petitioner only, using a proper method, i.e., first class mail. Furthermore, the decision was sent to the appropriate address on file with CIS.