

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

07



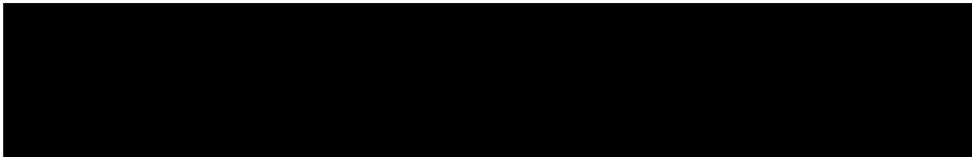
File: LIN 03 016 52947 Office: NEBRASKA SERVICE CENTER Date: SEP 06 2007

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 January 16, 2003, the Director of the Nebraska Service Center denied the nonimmigrant visa petition. On April 9, 2003, the director reopened the matter on motion by the petitioner and affirmed his prior decision. On May 9, 2003, the petitioner appealed this denial to the Administrative Appeals Office (AAO) and, on June 29, 2004, the AAO summarily dismissed the appeal. On July 29, 2004, previous counsel to the petitioner filed a Motion to Reopen and Reconsider the AAO's decision. On July 14, 2006, the AAO dismissed the motion. On December 27, 2006, current counsel to the petitioner filed a Motion to Reopen with the AAO in accordance with 8 C.F.R. § 103.5. 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)(1)(iii)(D), and 103.5(a)(4).

The petitioner is a Kansas corporation which is allegedly in the restaurant business.<sup>1</sup> The petitioner seeks to extend the employment of the beneficiary as 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 director denied the petition after concluding that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity. The AAO subsequently summarily dismissed the appeal.

Citizenship and Immigration Services (CIS) regulations require that motions to reconsider be filed within 30 days of the underlying decision. 8 C.F.R. § 103.5(a)(1)(i). Likewise, CIS regulations require that motions to reopen be filed within 30 days of the underlying decision, except that failure to timely file a motion to reopen may be excused in the discretion of CIS where it is demonstrated that the delay was reasonable and was beyond the affected party's control. *Id.* In this matter, the Motion to Reopen was filed on December 27, 2006, 166 days after the AAO's July 14, 2006 decision. The record indicates that the AAO's prior decision was mailed to both the petitioner at its business address and to its previous counsel. Therefore, to the extent the Motion to Reopen could in any way be construed to be a motion to reconsider, it is untimely and must be dismissed for that reason. To the extent the Motion is a motion to reopen, as it is named, the Motion does not establish that the failure to file the Motion within 30 days of the decision was reasonable and beyond the affected party's control. While the AAO understands that the basis for the Motion is ineffective representation by counsel, the Motion does not establish that this ineffective representation prejudiced the petitioner's ability to timely file the instant Motion, especially when the AAO gave notice by mail of its decision to the petitioner at its business address. When a party receives notice of a decision and fails to take the required action, an untimely motion to reopen may be denied even when the underlying unfavorable decision was the product of ineffective, or even fraudulent, representation. *See generally Chen v. Gonzales*, 131 Fed. Appx. 734 (1<sup>st</sup> Cir. 2005) (unpublished); *Oliveira v. Gonzales*, (5<sup>th</sup> Cir. 2005).<sup>2</sup>

---

<sup>1</sup>It is noted that, according to Kansas state corporate records, the petitioner's corporate status in Kansas was "forfeited" on July 15, 2003. Therefore, as the State of Kansas has forfeited the petitioner's corporate privileges, the company can no longer be considered a legal entity in the United States. If this motion were not being dismissed for the reasons described herein, this would call into question the petitioner's continued eligibility for the benefit sought.

<sup>2</sup>Counsel indicates in the motion that the petitioner is filing the motion "within 180 days of receipt of the decision." However, it must be noted that a 180-day deadline to file a motion does not apply to the instant petition. Rather, the requirements, deadlines, and standards set forth in 8 C.F.R. § 103.5 apply.

Furthermore, 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)(D) requires that motions be "[a]ddressed to the official having jurisdiction." In this matter, the motion does not contain the statement described in 8 C.F.R. § 103.5(a)(1)(iii)(C) nor was it addressed to the official having jurisdiction, i.e., the AAO. To the contrary, the motion was addressed to the Nebraska Service Center.

As the motion did not meet the applicable requirements, it must be dismissed. 8 C.F.R. § 103.5(a)(4).

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.