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U.S. Citizenship
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Services

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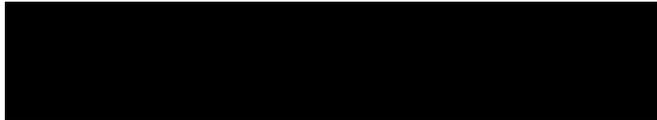


File: SRC 03 005 50043 Office: TEXAS SERVICE CENTER Date: **SEP 10 2007**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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: On November 18, 2002, the Director of the Texas Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on February 16, 2006, the AAO dismissed the appeal. On April 18, 2006, a motion to reconsider the AAO's decision was filed with the Texas Service Center. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(A), (C), and (E), and 103.5(a)(4).

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as a manager of construction trade workers 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 limited liability company, claims to be engaged in providing construction related services.

The director denied the petition concluding that the petitioner failed to establish that it has a qualifying relationship with a foreign employer. As indicated above, the AAO dismissed the subsequently filed appeal of the director's decision on February 16, 2006, and further determined that the petitioner failed to establish that the beneficiary has been or will be employed in a primarily managerial or executive capacity. A motion for reconsideration of the AAO's decision was filed on April 18, 2006.

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 Texas Service Center on April 18, 2006, or 61 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

¹The record indicates that an attempt to file the instant motion was made directly with the AAO on April 10, 2006, 53 days after the decision of the AAO. It is noted that the attempt to file this motion directly with the AAO did not establish a receipt date of April 10, 2006. As clearly explained in the AAO's decision dated February 16, 2006, further inquiries regarding the matter should have been made to the Texas 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 Texas 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 Texas Service Center – April 18, 2006. Even if the inappropriate delivery of the motion to the AAO on April 10, 2006 established an earlier receipt date, the motion was still untimely because it was delivered to the AAO 53 days after the AAO's decision. 8 C.F.R. § 103.5(a)(1)(i).

Furthermore, counsel's argument that the AAO's receipt of the motion on April 10, 2006 combined with the alleged mailing of the decision on March 8, 2006 establishes that the motion was timely filed on the 33rd day is without merit. First, as explained above, the AAO's receipt of the motion did not establish a receipt date of April 10, 2006. Therefore, even assuming a notice date of March 8, 2006, the motion was still untimely since it was not received by the Texas Service Center until April 18, 2006, or 41 days after March 8, 2006. Second,

In addition, the motion shall be dismissed for failing to meet three 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)(A) requires that motions be "signed by the affected party or the attorney or representative of record, if any." 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 was not signed by the affected party or the attorney or representative of record. The Form G-28, Entry of Appearance as Attorney or Representative, dated April 8, 2006, which was submitted for the record, only entered the appearance of counsel for the beneficiary, and not for the petitioner. 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). As the beneficiary and the representative are not recognized parties, counsel is not authorized to file a motion. 8 C.F.R. § 103.5(a)(1)(iii)(A).

Moreover, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C) and, 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. 8 C.F.R. § 103.5(a)(1)(iii)(E). Instead, the petitioner was obligated to file the motion with the Texas 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)(A), (C), and (E), it must also be dismissed for these reasons.

the proper date for the AAO's decision is February 16, 2006, and not March 8, 2006, as alleged by counsel. As admitted by counsel and as indicated in the record, the AAO properly gave routine notice by mail at the time the decision was made to the petitioner's last known address, i.e., [REDACTED] Florida 33442. 8 C.F.R. §§ 103.5a(a)(1) and (d); 8 C.F.R. § 103.2(b)(19). As the petitioner filed the appeal to the AAO *pro se*, the AAO did not send a copy to counsel. However, this address ceased to be the petitioner's address at some point prior to the dismissal of the appeal by the AAO on February 16, 2006, and the decision was returned to the AAO by the United States Post Office as undeliverable. It must be noted that the record is devoid of any evidence that the petitioner ever gave notice to CIS, including the AAO, that its address had changed. To the contrary, the AAO properly used the address used by the petitioner in the Form I-290B and its supporting documentation. After receiving the returned decision, the AAO then sent a copy of the decision to the petitioner at [REDACTED], Boca Raton, Florida 33433 on or about March 8, 2006. However, the AAO's gratuitous act of sending a copy of the decision to the petitioner's new address when the petitioner had neglected to notify CIS of its change of address will not serve to "move up" the date of the AAO's decision to March 8, 2006 for purposes of filing a timely motion. As the AAO properly gave notice of the February 16, 2006 decision in accordance with the regulations by sending it to the petitioner's last known address by regular mail, the date to be used in calculating the due date of the instant motion is February 16, 2006. Therefore, as the instant motion was filed with the Texas Service Center 61 days later, the motion was untimely and 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.