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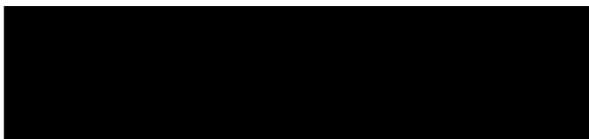
07

File: WAC 05 113 53915 Office: CALIFORNIA SERVICE CENTER Date: **SEP 11 2007**

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

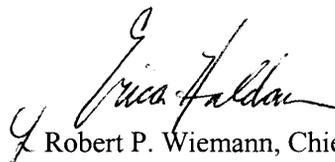
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF 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: The Director, California Service Center, denied the petition for a nonimmigrant visa, and the petitioner filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the Administrative Appeals Office (AAO) for review. The AAO dismissed the appeal, and the matter is now before the AAO on a motion to reopen. The motion will be rejected as untimely 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 October 4, 2006. According to the date stamp on the motion to reopen, it was received by CIS on February 2, 2007, approximately four months after the decision was issued. The petitioner has presented no evidence that the delay was reasonable and beyond the control of the petitioner. Accordingly, the motion was untimely filed.

In addition, the motion contains a claim that the petitioner's prior counsel provided ineffective assistance because he failed to raise the issue of whether the beneficiary was acting as a function manager on appeal, and additionally failed to file a timely motion to reopen after the AAO's dismissal of the appeal. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The petitioner has failed to satisfy these requirements with regard to its claim of ineffective assistance of former counsel.

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

ORDER: The motion is rejected.