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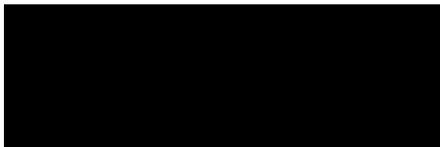
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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File: EAC 04 251 53318

Office: VERMONT SERVICE CENTER

Date:

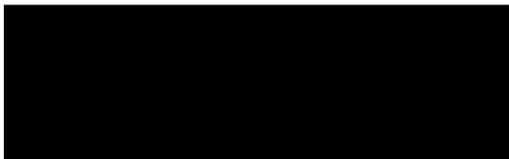
SEP 24 2007

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: The Director, Vermont Service Center, initially approved the nonimmigrant visa petition. Upon further review, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served a notice of his intent to revoke the approval on December 12, 2006, and the approval was subsequently ordered revoked on March 1, 2007. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(I).

The petitioner originally filed this nonimmigrant visa petition seeking to employ the beneficiary as its president to open a new office in the United States 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 is a corporation organized under the laws of the State of New York and alleges that it is a private carrier service. The beneficiary was initially granted a one-year period of stay to open a new office in the United States from September 15, 2004 until September 6, 2005.

The director subsequently revoked the petition on March 1, 2007 concluding that the petitioner failed to establish that the beneficiary will primarily perform qualifying duties in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review.

The regulation at 8 C.F.R. § 103.3(a)(2) requires an affected party to file the complete appeal within 30 days after service of the decision, or, in accordance with 8 C.F.R. § 103.5a(b), within 33 days if the decision was served by mail. The record indicates that the decision of the director was served by mail on Thursday, March 1, 2007. Counsel to the petitioner filed an appeal with the Vermont Service Center on Wednesday, April 4, 2007, 34 days after the decision was mailed.

Thus, the appeal was not timely filed and must be rejected on these grounds pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(I).

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case. Title 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Title 8 C.F.R. § 103.5(a)(3) requires that a motion to reconsider state the reasons for reconsideration and be supported by any pertinent precedent decisions to show that the prior decision was based on an incorrect application of law or policy.

A review of the record indicates that the appeal meets the requirements for a motion to reconsider. Since jurisdiction for a motion lies with the officer that made the last decision, the petition will be remanded to the director for consideration as a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(1)(ii).

Although the petition will be remanded, the AAO notes that the record does not appear to persuasively establish (1) that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position; (2) that the petitioner and the foreign employer have a qualifying relationship;

(3) that the foreign employer was "doing business" at the time the petition was filed; or (4) that the beneficiary was employed abroad in a primarily managerial or executive capacity.

ORDER: The appeal is rejected and the petition is remanded to the director for further action in accordance with the foregoing.