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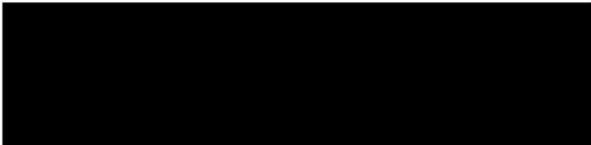


File: WAC 08 040 51610 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2008**

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)

ON 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 nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(I).

The petitioner, a pharmaceutical development services company, seeks to classify the beneficiary as an L-1B nonimmigrant intracompany transferee having specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). It seeks to employ the beneficiary in the position of senior client manager for a three-year period.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, or that she has been and would be employed in a position that requires specialized knowledge.

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 date of filing is not the date of mailing, but the date of actual receipt. See 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the decision of the director dated January 24, 2008 was sent both to counsel and to the petitioner. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Although counsel dated the appeal February 8, 2008, it was sent by Federal Express on February 25, 2008 and received by the director on February 27, 2008, 34 days after the decision was issued. Accordingly, the appeal was untimely filed. The director erroneously annotated the appeal as timely and forwarded the matter to the AAO.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. See 8 C.F.R. § 103.5(a)(1)(ii).

Here, the untimely appeal does not meet the requirements of a motion to reconsider or a motion to reopen. The petitioner failed to cite any pertinent precedent decisions establishing that the director's decision was based on an incorrect application of law or policy. Therefore, it does not meet the requirements of a motion to reconsider.

Likewise, the petitioner failed to state any "new facts" which could be considered in a reopened proceeding. Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹ The petitioner did not submit any additional evidence on appeal, and counsel's brief did not aver any new, previously unavailable facts for consideration. As such, there is no evidence submitted on appeal that may be considered "new" under 8 C.F.R. § 103.5(a)(2) and that could be considered a proper basis for a motion to reopen.

¹The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

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The untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.