

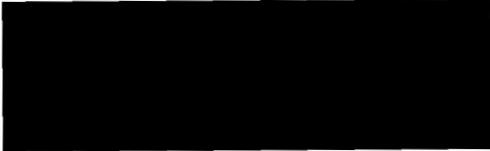


U.S. Citizenship  
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File: EAC 07 234 52408 Office: VERMONT SERVICE CENTER Date: **AUG 01 2008**

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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 of the Vermont 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 pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I) and 8 C.F.R. § 103.3(a)(2)(v)(B)(I).

The petitioner is a Florida corporation and is allegedly an import/export business. The petitioner seeks to employ the beneficiary as its sales general manager 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 in a primarily managerial or executive capacity.

On January 24, 2008, the beneficiary filed a Form I-290B with the service center purporting to appeal the decision of the director dated December 13, 2007. The beneficiary did not indicate that she was signing the Form I-290B on behalf of the petitioner. Therefore, it must be concluded that the beneficiary filed the Form I-290B, and not the petitioner. Citizenship and Immigration Services (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 is not a recognized party, she is not authorized to file an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B).

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

Furthermore, 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 sent to the petitioner on December 13, 2007. The petitioner filed an appeal with the Vermont Service Center on January 24, 2008, 42 days after the decision was served.<sup>1</sup>

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<sup>1</sup>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. However, as this appeal is also being rejected because it was filed by an unrecognized party, the service center director should not treat the untimely appeal as a motion. Regardless, it is noted that the appeal does not meet the applicable requirements of a motion to reopen or reconsider. 8 C.F.R. § 103.5(a). This regulation states in pertinent part that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." *Id.* Furthermore, "[a] motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [CIS] policy." *Id.* In this matter, the petitioner offers no "new" evidence, which was not available in the initial proceeding. Likewise, the petitioner fails to cite to any pertinent precedent decisions establishing that the director's decision was an incorrect application of law or CIS policy.

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

**ORDER:**                   The appeal is rejected.

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<sup>2</sup>It must be noted that in the beneficiary's Form I-290B no explanation was offered regarding the petitioner's failure to establish that the beneficiary will be employed primarily in an executive or managerial capacity. Since 8 C.F.R. § 103.3(a)(1)(v) requires the AAO to summarily dismiss an appeal when the appellant fails to identify specifically any erroneous conclusion of law or statement of fact, the AAO would be obligated to summarily dismiss the current appeal if the appeal were not being rejected. No erroneous conclusion of law or statement of fact was identified for the appeal.