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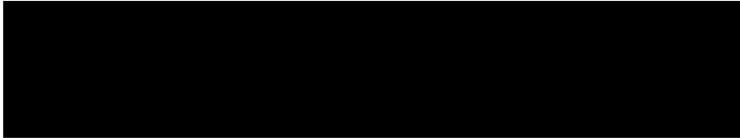
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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File: LIN 06 082 51607 Office: NEBRASKA SERVICE CENTER Date: FEB 28 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 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 May 12, 2006, the Director of the Nebraska Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on May 10, 2007, the AAO dismissed the appeal. On July 6, 2007, a motion to reconsider the AAO's decision was filed with the Nebraska Service Center. The motion will be dismissed pursuant to 8 C.F.R. § § 103.5(a)(1)(i), 103.5(a)(1)(iii)(A) and (C), 103.5(a)(3), and 103.5(a)(4).

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary 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, an Illinois limited liability company, claims to be engaged in the "design and advertising" business.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has been employed abroad, or will be employed in the United States, in a primarily managerial or executive capacity. As indicated above, the AAO dismissed the subsequently filed appeal of the director's decision on May 10, 2007, and a motion to reconsider the AAO's decision was filed on July 6, 2007.

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 Nebraska Service Center on July 6, 2007, or 57 days after the decision of the AAO. Therefore, the motion was untimely and must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).<sup>1</sup>

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

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<sup>1</sup>The record indicates that an attempt to file the instant motion was made directly with the AAO on June 8, 2007, 29 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 June 8, 2007. As clearly explained in the AAO's decision dated May 10, 2007, further inquiries regarding the matter should have been made to the Nebraska Service Center. Moreover, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E) requires that this motion be filed at the office maintaining the record, i.e., the Nebraska 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 Nebraska Service Center – July 6, 2007. Furthermore, it is noted that the instant motion is described by counsel as a motion to reconsider. However, even if the instant motion could be construed to be a motion to reopen, it must also be dismissed as untimely under 8 C.F.R. § 103.5(a)(1)(i). As the motion does not establish that its tardiness was "reasonable and was beyond the control of the applicant or petitioner," the movant was not permitted to file the motion more than 30 days, plus 3 days for mailing, after the AAO's decision. *Id.*

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)(3) lists the specific requirements for motions to reconsider.

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 December 12, 2005, 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 her 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) regarding judicial proceedings.

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) and (C), it must also be dismissed for these reasons.

Finally, the AAO will dismiss the motion for failure to meet the applicable requirements set forth in 8 C.F.R. § 103.5(a)(3). The regulations at 8 C.F.R. § 103.5(a)(3) require motions to reconsider to "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." In this matter, counsel did not support its motion with any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or policy. For this reason, the motion must also be dismissed pursuant to 8 C.F.R. § 103.5(a)(4) as the motion fails to meet applicable requirements.

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.