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U.S. Citizenship
and Immigration
Services

D7

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File: EAC 05 080 53692 Office: VERMONT SERVICE CENTER Date: **MAR 10 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 September 26, 2005, the director of the Vermont Service Center denied the nonimmigrant visa petition. The petitioner filed an untimely appeal, which was treated as a motion by the Vermont Service Center. On January 23, 2006, the director affirmed her prior denial of the petition. On February 21, 2006, the petitioner appealed to the Administrative Appeals Office (AAO), and, on March 7, 2007, the AAO summarily dismissed the appeal. On July 16, 2007, a motion to reopen the AAO's decision was filed with the Vermont Service Center. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), 103.5(a)(2), and 103.5(a)(4).

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee to open a new office in the United States 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, a Virginia corporation, claims to be engaged in the "heavy industries" business.¹

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. As indicated above, the AAO summarily dismissed the subsequently filed appeal of the director's decision on March 7, 2007, and a motion to reopen the AAO's decision was filed on July 16, 2007.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states in pertinent part that:

Any motion to reopen a proceeding before [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 reopen, except that failure to file before this period expires, may be excused in the discretion of [CIS] where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

In this matter, the instant motion was filed with the Vermont Service Center on July 16, 2007, or 131 days after the decision of the AAO. As the record is devoid of evidence establishing that the petitioner's failure to file the motion with the proper fee in a timely manner was reasonable and beyond its control, the motion must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).²

¹According to the corporate records of the Commonwealth of Virginia, the petitioner's corporate status in Virginia has been terminated. Accordingly, it does not appear as if the petitioner is still a functioning legal entity in the United States. This would call into question the petitioner's continued eligibility for the benefit sought if the motion were not being dismissed for the reasons set forth herein.

²The record indicates that the petitioner attempted to file the instant motion without the proper fee directly with the AAO on April 6, 2007, 30 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 April 6, 2007. As clearly explained in the AAO's decision dated March 7, 2007, further inquiries regarding the matter should have been made to the Vermont 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 Vermont 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

In addition, the motion shall be dismissed for failing to meet two other applicable requirements. The regulations at 8 C.F.R. §§ 103.5(a)(1)(iii) and (a)(2) list the filing requirements for motions to reopen. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a 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)(2) requires motions to reopen to "state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

In this matter, 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)(C), it must also be dismissed for this reason.

Also, the AAO will dismiss the motion for failure to meet the applicable requirements set forth in 8 C.F.R. § 103.5(a)(2). Counsel asserts in the motion that the AAO erred in summarily dismissing the appeal because the petitioner properly submitted a "brief" with the Form I-290B and in response to the AAO's facsimile request. However, the only documents in the record pertaining to the appeal are (1) a cover letter signed by counsel; (2) the Form I-290B; (3) a Form G-28; (4) a Form I-797C; and (5) a copy of a "business plan," which was submitted with the original petition. The petitioner resubmitted these documents, which fail to identify any factual or legal errors for the appeal, in response to the AAO's request for a copy of its "brief," which it has apparently never submitted. Accordingly, as the motion fails to "state the new facts to be provided in the reopened proceeding and [to] be supported by affidavits or other documentary evidence," the motion must also be dismissed for failing to meet this applicable requirement. 8 C.F.R. § 103.5(a)(4).

Motions for the reopening 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.

received by the Vermont Service Center – July 16, 2007. Finally, even if the attempt to file the motion with the AAO on April 6, 2007 had been proper, the motion was filed without the proper fee. Motions filed without the proper fee also do not retain filing dates. 8 C.F.R. § 103.2(a)(7); *see also* 8 C.F.R. § 103.5(a)(1)(iii)(B).