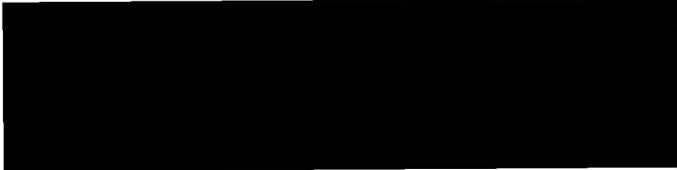


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D-7

FILE: EAC 07 011 51551 Office: VERMONT SERVICE CENTER Date: NOV 03 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, Vermont Service Center, denied the petition for a nonimmigrant visa. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal based on counsel's failure to submit a brief or evidence in support of the appeal. The matter is now before the AAO again on appeal. The appeal will be rejected.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its 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 petitioner is a corporation organized in the State of Florida and is allegedly in the wholesale business.

The director denied the petition on January 17, 2007 concluding that the petitioner did not establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed a timely appeal on February 16, 2007, and indicated that it would be sending a brief and/or evidence to the AAO within 30 days.

The AAO dismissed the petitioner's appeal in a decision dated October 3, 2007. Prior to issuing the decision, the AAO set a fax to the petitioner on September 10, 2007, advising the petitioner that no brief or evidence had been received as of that date. The petitioner was instructed to re-submit within five business days copies of any timely filed materials, along with evidence of the date they were originally filed with Citizenship and Immigration Services (CIS). As of the date of the AAO's decision, the petitioner had not responded to the AAO's fax, and no brief or evidence had been incorporated into the record of proceeding. Accordingly, the appeal was summarily dismissed pursuant to the regulation at 8 C.F.R. § 103.3(a)(1)(v).

On November 21, 2007, counsel for the petitioner filed the instant appeal. Counsel indicated on Form I-290B, Notice of Appeal or Motion, that he is filing an appeal, and that a brief and/or additional evidence will be submitted within 30 days. On Form I-290B, counsel asserts that the petitioner timely submitted additional evidence in support of the appeal to CIS on March 15, 2007, but that such evidence was returned to the petitioner for "unexplained reasons." As of this date, no brief or additional evidence has been received.

The petitioner's appeal must be rejected. The AAO does not exercise appellate jurisdiction over AAO decisions. The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). See DHS Delegation Number 0150.1; 8 C.F.R. § 103.3(a)(iv). Accordingly, the appeal is not properly before the AAO.

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

Furthermore, the petitioner's appeal was not timely filed. 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 AAO's decision was sent to the petitioner on October 3, 2007. Counsel for the petitioner filed the appeal with the Vermont Service Center on November 21, 2007, 49 days after the decision was served. The director erroneously annotated the appeal as timely and forwarded the matter to the AAO.

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Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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).

Finally, it should be noted that the petitioner did have the option of filing a motion to reopen or a motion to reconsider the AAO's most recent decision within 33 days of service pursuant to 8 C.F.R. § 103.5. The petitioner's appeal does not meet the requirements of a motion. As noted above, the petitioner stated that additional evidence would be submitted in 30 days. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. See 8 C.F.R §§ 103.5(a)(2) and (3).

ORDER: The appeal is rejected.