U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

File: SRC 03 004 50962 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

AUG 04 2004

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:

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, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a new office organized in the State of Florida in February 2002. It claims to distribute products and equipment. It seeks to temporarily employ the beneficiary as its vice-president. Accordingly, the petitioner endeavors to classify the beneficiary as a 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 claims that it is the subsidiary of Maquian Automotriz C.A., located in Caracas, Venezuela.

The director denied the petition concluding that the petitioner had not established that the beneficiary had at least one-year continuous full-time employment abroad with a qualifying foreign entity.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On the Form I-290B Notice of Appeal, filed on February 21, 2003, counsel for the petitioner stated that a separate brief or evidence would not be submitted.

The statement on the appeal form reads:

> Please refer to the letter attached to this petition.

The record does not contain a letter attached to the appeal and the literal interpretation of the language on the Notice of Appeal refers to a letter submitted with the petition. Inasmuch as counsel does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal the regulations mandate the summary dismissal of the appeal.

In addition, the AAO observes in order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on December 31, 2002. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. According to the date stamp on the Form I-290B Notice of Appeal, it was received by CIS on February 21, 2003, or 52 days after the decision was issued. Accordingly, the appeal was untimely filed. For this additional reason, the AAO cannot consider the appeal.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.