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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

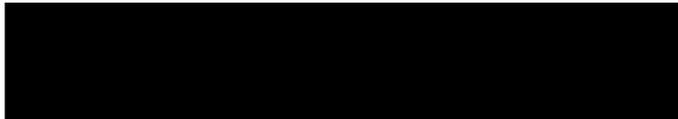
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FILE: WAC 06 096 51076 Office: CALIFORNIA SERVICE CENTER Date: JUN 04 2007

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(1)(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 nonimmigrant visa petition was denied by the Director, California Service Center. The Director, Texas 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) and 103.3(a)(2)(v)(B)(1).

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, a California corporation, states it operates a preschool/nursery and an import/export business. The petitioner claims to be a subsidiary of [REDACTED], located in Sri Lanka. The beneficiary was granted a one-year period in L-1A classification in order to open a new office in the United States and the petitioner now seeks to extend his status for one year.

The director denied the petition on August 2, 2006, concluding that the petitioner had not established: (1) that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity; or (2) that the petitioner has been doing business in the United States.

On September 19, 2006, counsel for the beneficiary filed an appeal seeking review of the director's decision. 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 appeal within 30 days after 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 Citizenship and Immigration Services (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. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal.

The AAO notes that Form I-290B, Notice of Appeal, was initially submitted on September 1, 2006; however, the Form I-290B was not properly signed as required by the regulations at 8 C.F.R. § 103.2(a)(7)(i), and was thus rejected and returned to counsel. Counsel subsequently re-filed a properly executed Form I-290B on September 19, 2006, 48 days after the director's decision was issued. Consequently, the appeal in this matter was untimely filed. Any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Furthermore, the AAO notes that counsel indicated on Form I-290B, Notice of Appeal, that he represents the beneficiary. The only Form G-28, Notice of Entry of Appearance as Attorney or Representative, submitted by counsel was signed by the beneficiary. The beneficiary did not indicate that he was signing as an authorized representative of the petitioner, and the petitioner is not named as the represented party on the Forms G-28 or Form I-290B. Finally, in a letter dated August 11, 2006, counsel states: "Our office represents [the beneficiary] in his appeal...." Thus, the record shows that counsel represents the beneficiary, not the petitioner.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states:

(B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Similarly, only an authorized party may maintain an appeal. 8 C.F.R. § 103.3(a)(2)(v) states:

Improperly filed appeal—(A). Appeal filed by person or entity not entitled to file it-- (1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

Inasmuch as neither the beneficiary nor his representative has standing to file an appeal in this matter, the appeal must also be rejected as improperly filed, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A).

ORDER: The appeal is rejected.