U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

File: EAC 07 093 51987 Office: VERMONT SERVICE CENTER Date: JUN 09 2009

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. 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)(B)(*1*).

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, a California corporation, states that it is involved in the design of gardens and air-supported greenhouses. It claims to have a branch or affiliate relationship with Nofim Ltd., located in Hasharon, Israel. The petitioner seeks to employ the beneficiary in a project management position for a period of three years.

The director denied the petition concluding that the petitioner did not establish that the U.S. entity and the foreign entity have a qualifying relationship.

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 decision of the director was sent to the petitioner on December 28, 2007. The record shows that the denial letter was sent to the attention of the petitioner's president at the mailing address indicated on Form I-129. The petitioner was not represented by counsel or by an accredited representative at the time the denial was issued.

Newly-retained counsel for the petitioner filed the instant appeal with the Vermont Service Center on March 6, 2008, 69 days after the denial was issued. On appeal, counsel and the petitioner claim that the address to which the notice of denial was sent belongs to a third-party individual who assisted in the preparation of the petition filing. The petitioner claims that this individual, who is not an attorney or an authorized representative, subsequently withheld information regarding the status of the petition. Counsel asserts that the petitioner learned of the denial on January 25, 2008, and that the beneficiary obtained "a verbal 30 day extension" of time in which to file the appeal from a USCIS employee named [redacted] on January 30, 2008. The AAO notes that even if such an extension were provided for by USCIS regulations, the appeal would have been due by February 28, 2008.

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)(*1*).

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case, the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii).

In this matter, it is noted that the appeal does not meet the applicable requirements of a motion to reopen or reconsider. 8 C.F.R. § 103.5(a). A motion to reopen must state the new facts to be proved in the reopened

proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the petitioner offers no "new" evidence, which could not have been presented in the initial proceeding. Likewise, counsel fails to cite to any pertinent precedent decisions establishing that the director's decision was based on an incorrect application of law or USCIS policy. In fact, the petitioner does not dispute the grounds for denial of the petition or contend that there was any error made on the part of the director. Rather, counsel requests "the utmost exercise of the Service's discretion in this matter and a grant to beneficiary and his dependents of 90 days so that beneficiary's children can finish their school term and beneficiary and his family can put their affairs in order and leave the country." Counsel emphasizes that the person who assisted the petitioner and beneficiary "was not an attorney and his counsel has sadly caused beneficiary and his family great angst and detriment."

There is no remedy available for a petitioner who assumes the risk of authorizing an unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Compean*, 24 I&N Dec. 710 (A.G. 2009)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof. *See* section 291 of the Act.

The untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*).

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.