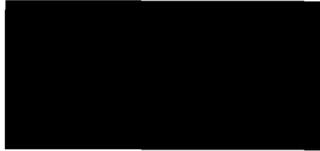


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



D7

DATE: **APR 05 2012**

Office: VERMONT SERVICE CENTER

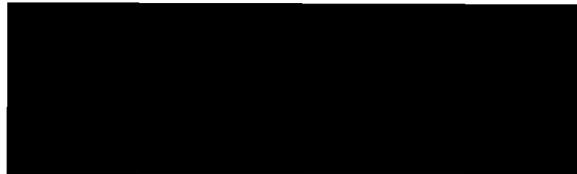
FILE: 

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 BENEFICIARY:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa, and the Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the AAO again on a second appeal. The AAO will reject the appeal as improperly filed.

The petitioner filed this nonimmigrant petition to classify 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 Texas corporation established in March 2008, intends to engage in the retail sale of wireless products and services. The petitioner claims that it is an affiliate of [REDACTED]. The petitioner seeks to employ the beneficiary as the president and chief executive officer of its new office in the United States for a one-year period.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity within one year. The AAO dismissed the petitioner's appeal in a decision dated February 5, 2010. In addition to finding that the beneficiary would not be employed in the United States in a primarily managerial or executive capacity, the AAO found that the petitioner failed to establish: (1) that it had secured sufficient physical premises to house the new office pursuant to 8 C.F.R. § 214.2(l)(3)(v)(A); and (2) the size of the United States investment, as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

On March 5, 2010, counsel filed a second appeal. The appeal will be rejected as improperly filed for two reasons.

First, the Form I-290B, Notice of Appeal or Motion was signed by an attorney who is not authorized to file the appeal. Counsel indicates on the accompanying Form G-28, Notice of Entry of Appearance as Attorney or Representative, that he represents the beneficiary. The petitioning employer is not named as a represented party on the Form G-28 or mentioned on the Form I-290B.

U.S. Citizenship and Immigration Services (USCIS) regulations specifically limit the filing of an appeal to an affected party (the person or entity with legal standing) and/or to the party's attorney or representative authorized pursuant to 8 C.F.R. § 292. The meaning of affected party does not include the beneficiary of a visa petition or his or her representative. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B).

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(I) provides that an appeal filed by a person or entity not entitled to file it is improperly filed and must be rejected. Accordingly, the appeal will be rejected.

Second, the appeal is improperly filed because the AAO does not exercise appellate jurisdiction over its own 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, and must be rejected as improperly filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is rejected.