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U.S. Citizenship
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Services

134



File:

WAC 96 169 52954

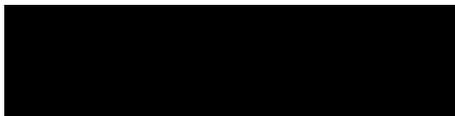
Office: CALIFORNIA SERVICE CENTER

Date: APR 26 2006

IN RE:

Petitioner:

Beneficiary:

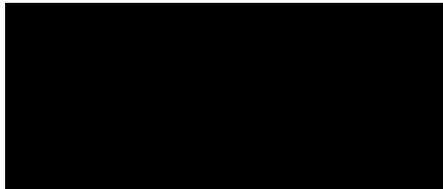


Petition:

Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

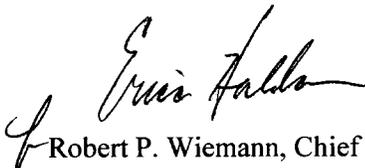
ON BEHALF OF PETITIONER:

COURTESY COPY TO:



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, California Service Center, initially approved the employment-based visa petition. Upon subsequent review of the matter, the director issued a notice of intent to revoke approval and ultimately revoked approval of the petition. The Administrative Appeals Office (AAO) subsequently rejected an appeal pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1), without rendering a decision. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be rejected.

The petitioner seeks 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 director revoked approval of the petition on September 21, 2001. On January 16, 2002,¹ counsel for the beneficiary submitted a Form I-290B, Notice of Appeal, indicating that he represented the petitioner and the beneficiary. The record also contains several Forms G-28, Entry of Appearance of Attorney or Representative, signed by the beneficiary authorizing several different attorneys to represent her in various matters before Citizenship and Immigration Services (CIS). Specifically the record contains a Form G-28 signed by the beneficiary authorizing the attorney who filed the Form I-290B, to represent her in filing "I-290" on November 13, 2003. The record does not contain any Forms G-28, signed by or on behalf of the petitioner. The beneficiary's purported position for the petitioner is identified as the finance department manager, and is not identified as an officer of the corporation.

Counsel for the beneficiary submits a motion seeking to reopen and reconsider the appeal that was rejected. Counsel's amended notice of appeal was filed December 21, 2004. Counsel argues that a notice of appearance was not in fact or legally required and in addition that the notice of appearance that was filed was properly executed by an officer/employee of the petitioner.

However, as the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reopened in this proceeding. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision in this matter. Because the director rendered the disputed decision, the AAO has no jurisdiction over this motion and the motion must be rejected.

The AAO notes once again that in accordance with 8 C.F.R. § 103.3(a)(1)(iii)(B), "affected party" means (in addition to the Service) the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. The AAO does not find that the beneficiary's position as a department manager authorized her to sign the Form G-28 as an officer of the company nor did the beneficiary represent herself as

¹ 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 or district office. In this matter, the Form I-290B bears a date stamp of October 9, 2001, that has been stricken through and a new date stamp showing the Form I-290B was received January 16, 2002. However, the record suggests that CIS erroneously returned the initial Form I-290B; as such the appeal is not considered late.

an officer of the company on the Form G-28. Inasmuch as neither the beneficiary nor her representative had standing to file an appeal in this matter, the appeal must be rejected as improperly filed. *See* 8 C.F.R. § 103.3(a)(2)(v)(A)(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 or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. Again, 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). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

Of note, counsel for the beneficiary references a recent opinion issued by the United States Court of Appeals for the Second Circuit, *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004). In that opinion, the court interpreted the third and fourth sentence of section 205 of the Act, 8 U.S.C. § 1155 (2003), to render the revocation of an approved immigrant petition ineffective where the beneficiary of the petition did not receive notice of the revocation before beginning his journey to the United States. *Firstland*, 377 F.3d at 130. Counsel asserts that the reasoning of this opinion must be applied to the present matter and accordingly, CIS may not revoke the approval because the beneficiary did not receive notice of the revocation before departing for the United States, since she was already in the United States when the director issued the revocation.

However, on December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). *See* Pub. L. No. 108-458, 118 Stat. 3638 (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking "Attorney General" and inserting "Secretary of Homeland Security" and by striking the final two sentences. Section 205 of the Act now reads:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition.

Furthermore, section 5304(d) of Public Law 108-458 provides that the amendment made by section 5304(c) took effect on the date of enactment and that the amended version of section 205 applies to revocations under section 205 of the Act made before, on, or after such date. Accordingly, the amended statute specifically applies to the present matter and counsel's *Firstland* argument no longer has merit.

As the AAO has no jurisdiction over this motion, the motion must be rejected.

ORDER: The motion is rejected.