



U.S. Citizenship
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Services

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FILE: [Redacted] SRC 03 053 54036

Office: TEXAS SERVICE CENTER Date:

JUL 09 2008

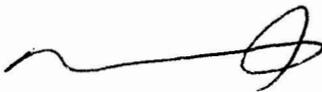
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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: SELF-REPRESENTED

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 preference visa petition was denied by the Director, Texas Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO), where the appeal was summarily dismissed in a decision dated April 5, 2005. The matter subsequently came before the AAO as a motion to reopen, which was rejected due to its untimely filing. The matter is now before the AAO on motion to reconsider. The motion will be granted. However, the underlying decision rejecting the prior motion to reopen will be affirmed.

The petitioner is a Florida corporation engaged in the import, export, trading, and wholesale of stone. It seeks to employ the beneficiary as its sales manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

In a decision dated February 27, 2004, the director issued the following adverse findings: 1) the petitioner failed to establish that the beneficiary had been employed abroad for one year in a qualifying managerial or executive capacity; 2) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity; and 3) the petitioner failed to establish that it had been doing business for one year prior to filing the petition.

In a Decision dated April 5, 2005, the AAO summarily dismissed the appeal, concluding that the petitioner failed to meet the regulatory requirements of 8 C.F.R. § 103.3(a)(1)(v), which requires the petitioner to specifically identify erroneous conclusions of law and/or statements of fact. The AAO identified specific deficiencies with the petitioner's prior submissions in an effort to further explain the basis for the director's underlying decision.

On January 8, 2007, twenty-one (21) months after the AAO issued its decision dismissing the petitioner's appeal, the petitioner submitted a motion to reopen, seeking further review of the AAO's prior adverse decision. The petitioner acknowledged that the motion was filed outside the regulatory time limit, claiming that the untimely filing was the result of ineffective assistance of counsel. The petitioner claims that it has submitted documentation in support of the most recent motion to document the ineffective assistance of [REDACTED], a paralegal and claimed immigration expert, and [REDACTED]. The AAO notes, however, that the record does not contain a Notice of Entry of Appearance as Attorney or Representative (Form G-28), identifying any prior counsel as having represented the petitioner in this matter. In fact, all prior communications, including the request for additional evidence, the notice of denial, the AAO's dismissal of the appeal, and the AAO's most recent decision rejecting the petitioner's untimely motion were issued directly to the petitioner, as there was no Form G-28 and, therefore, no indication that the petitioner was represented by counsel. Despite the claim that Ms. [REDACTED] and Mr. [REDACTED] transgressions are documented in exhibits three and four, the petitioner's supporting documentation is not labeled and consists almost entirely of photocopied documents that had been submitted earlier with regard to the Form I-140 that is the subject in this matter. As such, it is unclear why the petitioner has asserted that ineffective counsel was to blame for its untimely filing of the prior motion to reopen.

Furthermore, the AAO further notes, with regard to Ms. [REDACTED], who the petitioner claims is not an attorney, but rather an agent, that there is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1; *see also Singh-Bhathal v. INS*, 170 F.3d 943 (9th Cir. 1999). The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637

(BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) (requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). Additionally, even if the presence of an authorized representative was undisputed, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). In the present matter, there is no evidence that the petitioner took any of these preliminary steps to establish that any of its legal proceedings were hindered by the ineffective assistance of counsel.

In light of the above, the AAO concludes that it was not an abuse of discretion to determine that the petitioner's prior untimely filing of the motion to reopen was not reasonable and beyond the petitioner's control. *See* 8 C.F.R. § 103.5(a)(1)(i). The fact that the petitioner seeks to excuse its untimely filing on the basis of ineffective assistance of counsel while having failed to provide evidence that it was actually represented at the time of appeal or at the time of filing the motion indicates that the petitioner's untimely filing of the motion to reopen cannot be excused.

The previously filed motion to reopen will be rejected.

ORDER: The AAO's decision dated August 14, 2007, rejecting the petitioner's motion to reopen is upheld.