



U.S. Citizenship
and Immigration
Services

B4

DEC 08 2009

FILE: [REDACTED]
SRC 02 037 54698

OFFICE: TEXAS SERVICE CENTER

Date:

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:

[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 reopen or reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, Texas Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. The director ultimately revoked the approval of the petition. The petitioner subsequently filed a motion to reconsider the decision revoking approval. The director dismissed the petitioner's motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida corporation that seeks to employ the beneficiary as its general 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. The director determined that the petitioner failed to respond to the notice of intent to revoke and therefore failed to overcome the following adverse findings: 1) the beneficiary was not employed abroad in a qualifying managerial or executive capacity; 2) the foreign entity is not doing business; 3) the beneficiary will not be employed in a managerial or executive capacity; and 4) the petitioner failed to establish that it had the ability to pay the beneficiary's proffered wage from the date the Form I-140 was filed and continuing until the beneficiary obtains lawful permanent residence.

On motion, counsel argued that U.S. Citizenship and Immigration Services (USCIS) failed to serve the petitioner with a copy of the notice of intent to revoke (NOIR) and asserted that the USCIS Tampa District Office had jurisdiction to consider the motion. Counsel further argued that failing to serve the petitioner with a NOIR was the equivalent to revoking the approval of the petition via automatic revocation, which does not apply to the petitioner in the present matter.

In a decision dated January 8, 2008, the director dismissed the petitioner's motion to reconsider, finding that the petitioner was properly served with a copy of the NOIR via [REDACTED] the petitioner's attorney of record. The director further noted that the petitioner filed an untimely motion with the wrong USCIS office. Lastly, in consideration of 8 C.F.R. § 103.5(a)(3), which discusses the regulatory requirements of a motion to reconsider, the director found that the petitioner failed to meet the necessary criteria and that granting the motion was therefore not warranted.

On appeal, counsel reasserts his prior argument that USCIS failed to serve the petitioner with a copy of the NOIR or the final revocation notice. Counsel argues that USCIS erroneously served copies of both notices on [REDACTED] the petitioner's prior attorney, even though [REDACTED] the petitioner's current counsel, had submitted a Form G-28, Notice of Entry of Appearance, to establish his representation of the petitioner.

A review of the record, however, indicates that counsel's argument is not persuasive. As properly noted in the director's most recent decision, the record contains no evidence that the individual whom the petitioner had previously held out as its attorney of record had withdrawn his representation or that a new attorney had been chosen to represent the petitioner. While the record does contain a Form G-28 signed by Mr. [REDACTED] on May 25, 2004, counsel clearly articulated at the bottom of the notice itself that he was entering his appearance on behalf of the beneficiary for the purpose of appearing at the beneficiary's adjustment of status interview on May 25, 2004 at the USCIS Tampa office. Counsel made no indication that he was entering his appearance on behalf of the petitioner as well as the beneficiary. Therefore, USCIS had no reason to believe that Mr. [REDACTED] whose representation of the petitioner had been accepted by USCIS, was no longer the petitioner's attorney of record. While Mr. [REDACTED] has since submitted a properly executed Form G-28 in which he indicated his representation of the petitioner and the beneficiary, the Form G-28 that was executed in May 2004 only

established Mr. [REDACTED] representation of the beneficiary. In fact, while counsel's submission of the documents in Exhibits H through T establish USCIS's acceptance of Mr. [REDACTED] representation of the beneficiary in regard to his filing of Form I-485, Application to Register Permanent Resident or Adjust Status, there is no indication that USCIS accepted Form G-28 filed by Mr. [REDACTED] in 2004 as an indication that such representation applied to the petitioner.

In light of the above analysis, the AAO finds that the NOIR and the final notice of revocation were both properly issued to the petitioner via its counsel of record. As such, counsel's argument that, in effect, the approval of the petition was automatically revoked without notice is erroneous and need not be further addressed.

The AAO also takes note of counsel's Exhibit G, submitted in support of the appeal. Specifically, counsel provides evidence establishing that the petitioner's prior attorney of record was disbarred on June 5, 2006 and was therefore no longer practicing law as of that date. However, the Form G-28 alone will lead USCIS to acknowledge an attorney as representing an applicant or petitioner in an immigration proceeding. While the USCIS may request further evidence that the individual holding him-/herself out as a qualified representative is authorized to act in a representative capacity, USCIS is under no obligation to request such evidence or to conduct any further investigation to determine a representative's active bar status. *See* 8 C.F.R. § 292.4(a). In essence, if the petitioner wished to have someone other than Mr. [REDACTED] as its representative, it was the petitioner's responsibility to submit a properly executed Form G-28 signed by the petitioner and the new representative. As the petitioner had not submitted such documentation, USCIS had no reason to believe that any notices sent to Mr. [REDACTED] on the petitioner's behalf would not reach the petitioner in an expeditious manner.

Next, the AAO will determine whether the director was correct in finding that the petitioner failed to meet the regulatory requirements for 8 C.F.R. § 103.5(a)(3), which states the following, in pertinent part:

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 USCIS 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.

In the instant matter, counsel did not cite any legal precedent or applicable law that would indicate an error on the part of the AAO in dismissing the petitioner's motion. Therefore, the director was right to comply with 8 C.F.R. § 103.5(a)(4), which states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

Additionally, the director properly pointed out that the petitioner failed to file the motion in a timely manner and further noted that the motion was filed with the wrong office.

Pursuant to 8 C.F.R. § 103.5(a)(1)(i), the following time restrictions apply to motions to reopen and reconsider:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to

reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider . . . , except that failure to file before the period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

While not expressly discussed in the director's decision, it appears that the director may have excused the petitioner's late filing of the motion. However, the cause for the late filing is unclear. In fact, the AAO cannot rule out the possibility the late filing was caused by the petitioner submitting the motion to the wrong USCIS office. Regardless, there is no evidence that the petitioner demonstrated that the delay in the filing of the motion was reasonable and beyond the petitioner's control. As such, the director erred in failing to reject the untimely filed motion.

Lastly, the motion shall be dismissed for failing to meet two other applicable requirements. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." Section 103.5(a)(1)(iii)(E) requires that motions be submitted "to the office maintaining the record upon which the unfavorable decision was made." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Moreover, as explained by the director, the motion was originally submitted to the Tampa service office, which is not the office maintaining the record upon which the unfavorable decision was made. Instead, the petitioner was obligated to file the motion with the Texas Service Center within the applicable timeframe. The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C) and (E), it must also be dismissed for this reason.

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.

Title 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the director was correct in dismissing the motion. The appeal will be dismissed and the previous decision of the director will not be disturbed.

ORDER: The appeal is dismissed.