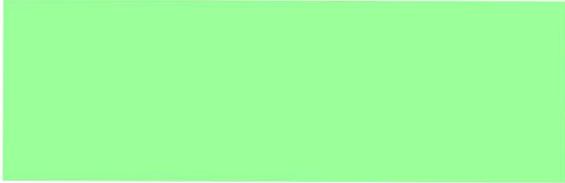


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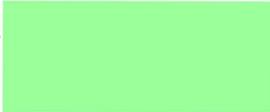


U.S. Citizenship
and Immigration
Services

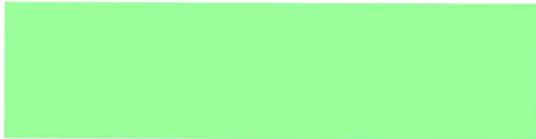


DATE: **JUN 12 2014** OFFICE: TEXAS SERVICE CENTER

FILE:



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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
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 dismissed. The matter is now before the AAO on motion to reopen. The motion will be dismissed as untimely filed.

The petitioner is a Texas corporation that seeks to employ the beneficiary as its marketing 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 denied the petition based on two independent grounds of ineligibility: 1) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity; and 2) the petitioner failed to establish that it has been doing business in the United States.

On appeal, counsel disputed both grounds for denial, claiming that the beneficiary fits the statutory definition for both managerial and executive capacity and also contending that, other than experiencing a business slowdown in 2005, the petitioner never stopped doing business.

In a decision dated December 13, 2010, we dismissed the petitioner's appeal, concluding that counsel's assertions with regard to the beneficiary's employment capacity in his position with the U.S. entity were not persuasive, as counsel failed to clarify how, in the absence of a support staff, the beneficiary would be relieved from having to primarily perform non-qualifying tasks. We found that, regardless of the beneficiary's job description, the evidence of record simply does not support the petitioner's claim that the beneficiary would be employed in a qualifying managerial or executive capacity. With regard to the director's second ground for denial, we found that counsel's claim was in direct contradiction to the evidence provided by the petitioner in the form of a Certificate of Filing, which was issued by the State of Texas for the purpose of reinstating the petitioner to active status as of November 26, 2007. Counsel's statement also contradicted the petitioner's own claim that after 2005 the U.S. entity's "business operation ceased due to lack of executive staff to direct and supervise the marketing, sales and overall functioning of the corporate activities in the United States."

The petitioner now files a motion to reopen, claiming that the AAO failed to timely mail the decision, dated December 13, 2010, in which we dismissed the petitioner's appeal. The petitioner claims that we sent the December 2010 decision in January 2014, approximately three years subsequent to the date stamped on the decision, and that we should therefore consider the motion despite its untimely filing. The petitioner also provided evidence, which includes a photocopied Texas Service Center envelope, date stamped January 21, 2014, addressed to the beneficiary and containing the Texas Service Center's return address. The petitioner also provides a copy of an unrelated decision issued by our office with regard to an entirely different petitioner.

The regulation at 8 C.F.R. § 103.5(a)(1) states the following in pertinent part:

- (i) 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

reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this 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.

In the present matter, the record shows that the decision dismissing the petitioner's appeal was issued on December 13, 2010. The record also shows that the petitioner filed a motion to reopen on February 14, 2014, approximately three years and two months after our decision was issued, thus indicating that the petitioner's motion was untimely filed. The petitioner asserts that the untimely filing of its motion should be excused because of error on the part of U.S. Citizenship and Immigration Services (USCIS) in its alleged untimely mailing of our decision. The petitioner relies on the Texas Service Center's envelope containing the January 21, 2014 date stamp as evidence of USCIS' error.

We find that the petitioner's assertions are not credible and that the evidence submitted on motion does not support these assertions. To be clear, any decision originating from within the AAO, as was the decision dated December 13, 2010, would be sent to the petitioner in an envelope containing the AAO's return address at [REDACTED] Washington, DC [REDACTED]. In addition, envelopes that are used to send AAO decisions have clear windows through which the petitioner's address can be seen so that there is no need to print a separate address label for the petitioner. The envelope provided in the petitioner's supporting Exhibit C shows that it was sent from the office of the Texas Service Center and that the beneficiary's, rather than the petitioner's, name was affixed on a separate address label. As the beneficiary is not a recognized party in this proceeding, a decision regarding an immigration benefit that the petitioner seeks to obtain would only be sent to the petitioner and counsel, if any. A decision would not be mailed to the beneficiary.¹ It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* At 591. I

Furthermore, an internal records check indicates that the only document that was mailed to the beneficiary in January 2014 by the Texas Service Center was in the form of an employment authorization card. Our internal records clearly indicate that the decision in which we dismissed the petitioner's appeal was issued on December 13, 2010. We have no reason to believe based on any of the petitioner's submissions that our

¹ U.S. Citizenship and Immigration Services regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in the visa proceeding. 8 C.F.R. § 103.2(a)(3). As the beneficiary is not a recognized party, he is not authorized to file an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B).

decision dismissing the appeal on December 13, 2010 was sent to the applicant for the first time by the Texas Service Center in January 2014.

In addition, with regard to the petitioner's claim of having received an unrelated AAO decision, the petitioner has not provided any evidence to establish that the petitioner obtained the unrelated decision due to USCIS error. In fact, we have no way of knowing precisely how the petitioner obtained a copy of the unrelated decision. Given the petitioner's unreliable claim in an attempt to excuse the untimely filing of this motion, we have no reason to believe that the petitioner's access to an appellate decision addressing an unrelated party was the result of this office's error.

We further notes that even if the petitioner's motion had been timely filed, it would nevertheless be dismissed based on the petitioner's failure to meet the motion requirements.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

In the present matter, other than the petitioner's submission of documents meant to establish error on the part of the AAO such that would excuse the petitioner's untimely filing of a motion to reopen, the petitioner has provided no affidavits or documentary evidence as required by 8 C.F.R. § 103.5(a)(2). Therefore, the petitioner's submissions do not meet the requirements of a motion to reopen.

In light of the above, the motion to reopen and reconsider, if timely filed, would have been dismissed in accordance 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.

Regardless, the instant motion will be dismissed due to its untimely filing.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The motion is dismissed.