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**U.S. Citizenship  
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Services**

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D-7

File: WAC 98 028 52596 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2006**

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

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 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 nonimmigrant visa petition was denied by the Director, California Service Center, and the Administrative Appeals Office (AAO) dismissed the petitioner's subsequently filed appeal. The AAO affirmed the decision to deny the petition on two subsequent motions to reopen and reconsider. The matter is now before the AAO on a third motion to reopen or reconsider. The motion will be rejected.

The petitioner states that it is engaged in the international trade of automobiles, paper pulp and tourism. It seeks to extend its authorization to employ its president 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 director denied the petition, concluding that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

The AAO dismissed the petitioner's appeal on July 22, 1999, and has affirmed its decision on two subsequent motions to reopen and reconsider, most recently in a decision dated May 2, 2002. The petitioner has now filed a third motion to reopen and reconsider.<sup>1</sup>

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that any motion to reopen or reconsider an action by Citizenship and Immigration Services (CIS) be filed within 30 days of the decision that the motion seeks to reopen or reconsider, except that failure to file before this period expires may be excused in the discretion of CIS where it is demonstrated that the delay was reasonable and was beyond the control of the petitioner.

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 motion shall be regarded as properly filed on the date that it is so stamped by the service center. It is noted that the AAO properly gave notice to the petitioner that it had 30 days to file the motion, and advised the petitioner that the motion, with the appropriate filing fee, must be filed with the office that originally decided the case, as required by 8 C.F.R. § 103.5(a)(iii).

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<sup>1</sup> The instant motion was filed by an attorney who has not previously been recognized in these proceedings, and who has no Form G-28, Notice of Entry as Attorney or Representative, on file. Counsel asserts that the motion is filed on behalf of the beneficiary, and not by an affected party. The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states:

(B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Citizenship and Immigration Services (CIS) 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 a proceeding. 8 C.F.R. § 103.2(a)(3). Accordingly, in addition to being untimely filed, the motion does not meet the filing requirements set forth at 8 C.F.R. § 103.5(a)(iii)(A).

In the present matter, according to the date stamp on the motion, the motion was received by the director on August 20, 2002, more than three months after the AAO's decision was issued. The AAO notes that the motion was initially improperly filed with the AAO, and was subsequently forwarded to the California Service Center, which returned the motion to the petitioner in order to request a properly completed check or money order to pay the filing fee.

As a matter of discretion, the petitioner's failure to file the motion within the period allowed will not be excused as either reasonable or beyond the control of the petitioner. Accordingly, the motion will be rejected as untimely filed.

**ORDER:** The motion is rejected.