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U.S. Citizenship
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Services

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File: SRC 04 026 51417 Office: TEXAS SERVICE CENTER Date: NOV 03 2006

IN RE: Petitioner:
Beneficiary:

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)

IN 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: On December 3, 2003, the Director of the Texas Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO) and, on June 2, 2005, the AAO dismissed the appeal. On July 29, 2005, purported counsel to the petitioner filed a Motion to Reopen and Reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(A), and 103.5(a)(4).

The petitioner is a Florida corporation allegedly engaged in the computer and construction business. The petitioner seeks to extend the employment of the beneficiary as its general manager 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 after concluding that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity. The AAO subsequently dismissed the appeal.

The Motion to Reopen and Reconsider filed on July 29, 2005 was signed by [REDACTED]. However, the Form G-28, Entry of Appearance as Attorney or Representative, was signed by the beneficiary and not by, or on behalf of, the petitioner. Moreover, [REDACTED] identifies himself in the Motion as counsel to the beneficiaries, not as counsel to the petitioner. Citizenship and Immigration Services (CIS) regulations require that motions be signed by the affected party or the attorney or representative of record. 8 C.F.R. § 103.5(a)(1)(iii)(A). 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). As the beneficiaries and their purported representative are not recognized parties, counsel is not authorized to file a motion and the Motion must be dismissed for this reason. 8 C.F.R. §§ 103.5(a)(1)(iii)(A) and 103.5(a)(4).

Also, CIS regulations require that motions to reconsider be filed within 30 days of the underlying decision. 8 C.F.R. § 103.5(a)(1)(i). Likewise, CIS regulations require that motions to reopen be filed within 30 days of the underlying decision, except that failure to timely file a motion to reopen may be excused in the discretion of CIS where it is demonstrated that the delay was reasonable and was beyond the affected party's control. *Id.* In this matter, the Motion was filed on July 29, 2005, 57 days after the AAO's June 2, 2005 decision. The record indicates that the AAO's decision was mailed to both the petitioner at its business address and to its representative. Therefore, to the extent the Motion is a motion to reconsider, it is untimely and must be dismissed for that reason. To the extent the Motion is a motion to reopen, the Motion does not establish that the failure to file the Motion within 30 days of the decision was reasonable and beyond the affected party's control. While the AAO understands that the basis for the Motion is ineffective representation by an unlicensed immigration consultant, the Motion does not establish that this ineffective representation prejudiced the petitioner's ability to timely file the instant Motion, especially when the AAO gave notice by mail of its decision to the petitioner at its business address. When a party receives notice of a decision and fails to take the required action, an untimely motion to reopen may be denied even when the underlying unfavorable decision was the product of ineffective, or even fraudulent, representation by an unlicensed

immigration consultant or attorney. *See generally Chen v. Gonzales*, 131 Fed. Appx. 734 (1st Cir. 2005) (unpublished); *Oliveira v. Gonzales*, 127 Fed. Appx. 720 (5th Cir. 2005).¹

As the motion did not meet the applicable requirements, it will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.

¹While the record is not entirely clear, there is a possibility that ██████████ may have sent the instant Motion directly to the AAO instead of to the Texas Service Center. There is also a possibility that, had ██████████ sent the Motion to the AAO, it may have arrived within 30 days of the underlying decision. Both the averment in paragraph 3 of the Motion and evidence in the record of a package being sent to the Texas Service Center by the AAO marked "motion w/ fee" imply that this may have occurred. However, even if the instant Motion had reached the AAO within 30 days of the underlying decision, this would not make the Motion timely. Title 8 C.F.R. § 103.5(a)(1)(iii)(E) requires movants to file motions with "the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction." In this case, the office maintaining the record is the Texas Service Center, not the AAO. As explained on the first page of the June 2, 2005 decision which was sent directly to the petitioner, all documents relating to the case were returned to the office which originally decided the case, i.e., the Texas Service Center, and that all further inquiries must be directed to that office. Therefore, the filing of the Motion with the AAO would have been in violation of 8 C.F.R. § 103.5(a)(1)(iii)(E), would not have tolled the filing deadline for the Motion, and would be independent grounds for dismissal pursuant 8 C.F.R. § 103.5(a)(4).