



U.S. Citizenship
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NOV 27 2006

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FILE: SRC 05 068 50379 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



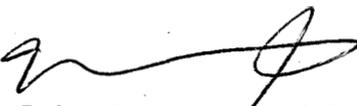
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(1)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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

6

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. The petitioner subsequently filed a motion to reopen. The director determined that the motion was not filed in a timely manner and dismissed the motion without rendering a decision on its merits. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary 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 on March 28, 2005. In order to properly file a motion, the regulation at 8 C.F.R. § 103.3(a)(1)(i) provides that the affected party must file the appeal within 30 days after service of the unfavorable decision, 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. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(A) requires that a motion be in writing and signed by the affected party or the attorney or representative of record, if any.

In accordance with 8 C.F.R. § 103.2(a)(7)(i) an application received in a U.S. Citizenship and Immigration Services (USCIS) 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 appeal shall be regarded as properly filed on the date it is so stamped by the service center or district office. In this case, the motion was initially received on May 2, 2005; however, the date stamp has been crossed out, as the motion was not signed by counsel. The motion was therefore properly rejected and returned to counsel.

The date stamp on the motion to re-open indicates that the motion was received as properly filed on May 12, 2005, or 45 days after the issuance of the director's notice of decision. Accordingly, on June 15, 2005, the director dismissed the motion as untimely filed, without rendering a decision on the merits of the case.

The petitioner has now filed an appeal asserting that the director improperly dismissed the motion as untimely filed. On appeal, counsel provides documentary evidence to establish that the motion was in fact received by the service center on May 2, 2005, prior to the expiration of the 33 days allowed by regulation. Counsel disputes the director's statement that the motion was received on May 12, 2005.

Upon review, the AAO finds that the director properly rejected the motion as untimely filed. While it has been established that the motion to reopen was received at the service center on May 2, 2005, for the reasons discussed above, the motion was not properly filed until May 12, 2005. Counsel fails to acknowledge that the motion was initially rejected by the service center and returned to counsel in order to be signed by her in accordance with the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(A). The director had sole discretion to excuse the petitioner's failure to file within the required time period, and chose not to do so.

As the record shows that the motion to reopen the petition was properly dismissed by the director as untimely filed, the appeal will be dismissed. The petitioner failed to file a motion or appeal of the director's March 28,

SRC 05 068 50379

Page 3

2005 decision within the required time period, thus the merits of the petition need not and will not be discussed herein.

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 appeal is dismissed.