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**U.S. Citizenship  
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Services**

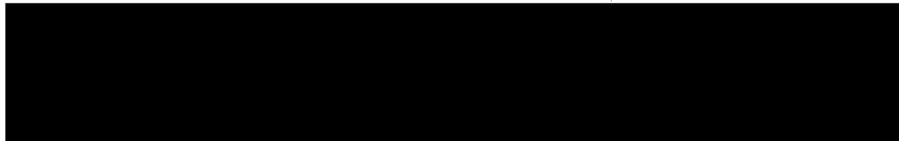
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File: WAC 04 068 50881 Office: CALIFORNIA SERVICE CENTER Date: **APR 0 8 2007**

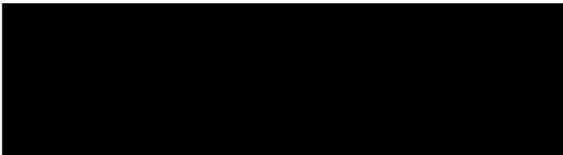
IN RE: Petitioner:  
Beneficiary:



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)

ON BEHALF OF PETITIONER:

COURTESY COPY MAILED TO:



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, Texas Service Center. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) determined that the appeal was not filed by an affected party, and rejected the appeal without rendering a decision. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be rejected.

The petitioner states that it is engaged in the international trading of jewelry and garment products. It seeks to employ the beneficiary as its president, and has petitioned to classify the beneficiary as a 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 beneficiary was initially granted a one-year period of stay in L-1A classification in order to open a new office in the United States and the petitioner now seeks to extend his stay for three additional years.

The director denied the petition on March 12, 2004, concluding that the petitioner did not establish that the beneficiary would be employed by the U.S. entity in a managerial or executive capacity.

On April 12, 2004, counsel filed an appeal seeking review of the director's decision. After reviewing the record, the AAO rejected the appeal on December 14, 2005, as the appeal had not been filed by an affected party. See 8 C.F.R. 103.3(a)(2)(v)(A)(I). The Form I-290B, Notice of Appeal, the Form G-28 Notice of Entry of Appearance as Attorney or Representative, and counsel's brief dated April 7, 2004 all indicated that counsel represents the beneficiary. The Form G-28 did not reference the petitioning company, and identified only the beneficiary as a represented party.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the appeal within 30 days after service of the unfavorable decision. 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).

On January 30, 2006, counsel for the beneficiary filed a motion seeking to reopen the appeal that was rejected as improperly filed. However, counsel does not address the AAO's grounds for rejecting the appeal. Rather, counsel states:

The reason the Service denied the appeal was that the Service alleged that the appeal was filed late therefore, no merits of this case were reached at all.

The Service in this case made a mistake. The Service denied this case on March 12, 2004. We timely filed the appeal with the Service with 33 days. . . . the Service received this appeal on

April 12, 2003 [sic]. In order words, we reached the Service with 31 days. This is a mistake that cannot be excused.

Counsel, who once again indicates that he represents the beneficiary as "respondent," requests that the AAO reopen the matter in order to consider the appeal on its merits.

As the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reopened in this proceeding. Upon review, the AAO notes that the appeal was properly rejected, and counsel has not submitted evidence on motion to show that he represents the affected party in this matter. Contrary to counsel's arguments on motion, the AAO clearly did not reject the appeal as untimely filed.

According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Because the disputed decision was rendered by the director, the AAO has no jurisdiction over this motion and the motion must be rejected.

Furthermore, the AAO notes that the instant motion is untimely filed. 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. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

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 appeal 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 advised the petitioner that the record of proceeding was returned to the office that originally decided its case and that any further inquiry must be made to that office.

The AAO's previous decision was issued on December 14, 2005. It appears that counsel initially sent the motion to the AAO, which properly returned the motion and filing fee to counsel. Counsel then filed the motion with the California Service Center, where the motion was stamped and dated as properly filed on January 30, 2006, or 47 days after the AAO's decision. For this additional reason, the motion will be rejected.

**ORDER:** The motion is rejected.