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U.S. Citizenship
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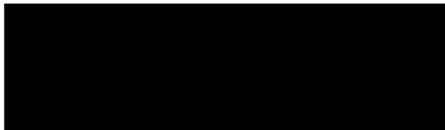


File: EAC 07 070 50675 Office: VERMONT SERVICE CENTER Date: DEC 04 2007

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)

IN BEHALF OF BENEFICIARY:



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 Director of the Vermont Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(I) and 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

The petitioner is a Nevada limited liability company and is allegedly in the florescent lighting business.¹ The petitioner seeks to employ the beneficiary as its marketing director 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 failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

The regulation at 8 C.F.R. § 103.3(a)(2) requires an affected party to file the complete appeal within 30 days after service of the decision, or, in accordance with 8 C.F.R. § 103.5a(b), within 33 days if the decision was served by mail. The record indicates that the decision of the director dated March 27, 2007 was sent directly to the petitioner. An appeal was filed with the Vermont Service Center on Wednesday, May 9, 2007, 43 days after the decision was served by first class mail.

Thus, the appeal was not timely filed and must be rejected on these grounds pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(I).²

Likewise, the Form G-28, Entry of Appearance as Attorney or Representative in the record was signed by the beneficiary, not by an authorized representative of the petitioner and not on behalf of the petitioner.³ Therefore, the attorney identified in the Form G-28 is counsel to the beneficiary, not counsel to the petitioner. The Form I-290B that was submitted in response to the March 27, 2007 decision was signed and filed by the attorney identified in the above Form G-28 on behalf of the beneficiary.

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

¹It is noted for the record that, according to the records of the Nevada Department of State, the petitioner's correct company name is " [REDACTED] "

²It is noted that the Vermont Service Center initially received the instant appeal on April 27, 2007. However, because the Form I-290B was not properly signed, the filing was rejected. The regulation at 8 C.F.R. § 103.2(a)(1) requires that all documents submitted to a service center be executed and filed in accordance with the instructions on the form. Further, 8 C.F.R. § 103.2(a)(7) provides that "[a]n application or petition which is not properly signed . . . shall be rejected as improperly filed" and that "[r]ejected applications and petitions . . . will not retain a filing date." Therefore, the attempt to file an appeal with an unsigned I-290B on April 27, 2007 did not extend the time to file a properly executed appeal beyond the 33rd day.

³Although it is noted that an individual named [REDACTED] also signed the Form G-28, it is in the matter disclosure section and fails to act as a consent to the representation of the petitioner, whose name does not appear on this document.

not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). As the beneficiary and his representative are not recognized parties, counsel is not authorized to file an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B).

As the appeal was not properly filed, it will also be rejected for this reason. 8 C.F.R. § 103.3(a)(2)(v)(A)(1). The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case. However, the instant untimely appeal shall not be treated as a motion by the Vermont Service Center. As noted above, the instant appeal is being rejected as being both untimely and as being filed by a representative of the beneficiary. As the beneficiary's counsel is not permitted to file an appeal or a motion, the Vermont Service Center should not consider the untimely appeal as a motion. 8 C.F.R. § 103.5(a)(1)(iii)(A).⁴

ORDER: The appeal is rejected.

⁴Finally, counsel to the beneficiary asserts the following in the Form I-290B: "Due to translations, service did not understand documents and their relationship thereto." Counsel also notes that a brief and/or evidence would be sent to the AAO within 30 days. However, as of the date of this decision, a brief or additional evidence has not been received. Therefore, as 8 C.F.R. § 103.3(a)(1)(v) requires the AAO to summarily dismiss an appeal when the appellant fails to identify specifically any erroneous conclusion of law or statement of fact, the AAO would be obligated to summarily dismiss the current appeal if the appeal were not being rejected. No erroneous conclusion of law or statement of fact was identified for the appeal.