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U.S. Citizenship
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Services

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07

File: SRC 05 197 50431 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



FEB 01 2007

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:



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, Texas Service Center, denied the petition for a nonimmigrant visa. 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).

The petitioner seeks to extend the temporary employment of the beneficiary as its general manager in the United States 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 U.S. petitioner, a corporation organized in the State of Florida, claims to be a construction company, and claims to be the subsidiary of S.A. Constructora, Ltda., located in Cali, Colombia. The director denied the petition concluding that the petitioner did not establish that (1) the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) the petitioner was doing business as required by the regulations.

The record indicates that the decision of the director was mailed to the petitioner on September 2, 2005. A Form I-290B, Notice of Appeal to Administrative Appeals Unit, was received by the Texas Service Center on September 30, 2005, 28 days after the decision was mailed. However, the Form I-290B included the incorrect filing fee of \$110.00. A new filing fee of \$385.00 became effective on September 28, 2005. 70 Fed. Reg. 50954-50957 (Aug. 29, 2005); 8 C.F.R. § 103.7. On September 30, 2005, the Texas Service Center returned the Form I-290B to the petitioner and indicated that the incorrect filing fee was included. The Texas Service Center received the resubmitted Form I-290B with the proper \$385.00 filing fee on October 12, 2005.

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. Title 8 C.F.R. § 103.2(a)(7)(i) requires Citizenship and Immigration Services (CIS) to reject any petition or application filed with the incorrect filing fee. Likewise, filings which were rejected because they were submitted with incorrect filing fees do not retain filing dates. Therefore, in this matter, CIS is required to reject the appeal as untimely filed. Although the petitioner initially submitted the I-290B within 33 days of service of the decision, this submission included the incorrect filing fee. Therefore, as this filing did not retain a filing date, the actual filing date for the Form I-290B is October 12, 2005, 40 days after the decision was served by 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).

While the AAO notes that the instructions in the Texas Service Center's September 2, 2005 decision identified the proper filing fee for the appeal as \$110.00, this decision was dated and mailed 26 days before the effective date of the filing fee change to \$385.00. Moreover, as the fee change properly appeared in the Federal Register in accordance with law, the petitioner was charged with notice of the appropriate fee change. See 70 Fed. Reg. 50954-50957 (Aug. 29, 2005). Finally, as CIS, which includes both the Texas Service Center and the AAO, lacks the authority to authorize an untimely appeal which failed to hold a filing date due to the submission of an incorrect filing fee, CIS is compelled to reject the appeal. Title 8 C.F.R. § 103.3(a)(2)(v)(B)(I) states in pertinent part that "[a]n appeal which is not timely filed within the time allowed must be rejected as improperly filed." Therefore, under the regulations, CIS lacks the power to consider the untimely appeal.

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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

ORDER: The appeal is rejected.