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File: EAC 03 078 52910 Office: VERMONT SERVICE CENTER Date: JUN 04 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

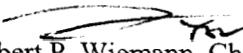
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF 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: On December 3, 2003, the Director of the Vermont Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO) on December 27, 2003, and, on July 12, 2004, the AAO summarily dismissed the appeal. On August 9, 2004, the petitioner filed a motion to reconsider the AAO's decision with the Vermont Service Center. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(C) and (D), 103.5(a)(3), and 103.5(a)(4).

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president as an L-1B nonimmigrant intracompany transferee having specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). **The petitioner, a New York corporation, claims to be an importer and distributor of leather goods.**

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in the United States in a capacity involving specialized knowledge. As indicated above, the AAO summarily dismissed the subsequently filed appeal of the director's decision on July 12, 2004, and the petitioner moved to reconsider the AAO's decision.

First, the motion shall be dismissed for failing to meet two applicable requirements. The regulation at 8 C.F.R. § 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." Section 103.5(a)(1)(iii)(D) requires that motions be "[a]ddressed to the official having jurisdiction." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Moreover, the motion was not addressed to official having jurisdiction, i.e., the AAO. The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C) and (D), it must be dismissed for this reason.

Second, upon review, the AAO will dismiss the motion for failure to meet the applicable requirements set forth in 8 C.F.R. § 103.5(a)(3). The regulations at 8 C.F.R. § 103.5(a)(3) require motions to reconsider to "state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services] policy." In this matter, counsel asserts that the AAO erred in summarily dismissing its appeal from the director's December 3, 2003 decision on July 12, 2004 because it submitted a brief in support of its December 27, 2003 appeal on or about June 21, 2004, or three weeks before the AAO dismissed the appeal. However, counsel did not support its motion with any pertinent precedent decisions to establish that the AAO's failure to consider a brief filed almost six months after the filing of an appeal, and where counsel has represented in the Form I-290B that a brief and/or evidence would be submitted within 30 days of the filing of the appeal, was an incorrect application of law or policy. For this reason alone, the motion must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4) as the motion fails to meet applicable requirements.

Regardless, the AAO concludes that its summary dismissal of the December 27, 2003 appeal was not in error. As indicated above, counsel filed the instant appeal on December 27, 2003. Counsel stated in the Form I-290B, and in a letter dated December 19, 2003, that a brief and/or evidence would be submitted to the AAO within 30 days.

Counsel alleges that it filed a brief with the AAO on or about June 21, 2004, almost 6 months after the filing of the appeal. The regulations at 8 C.F.R. § 103.3(a)(2)(vi) permit an affected party to file a brief with the Form I-290B. The AAO may grant an affected party additional time to file a brief. *See* 8 C.F.R. § 103.3(a)(2)(vii). Consistent with the discretion described in 8 C.F.R. § 103.3(a)(2)(vii), the Form I-290B extends to all appellants the option of submitting a brief and/or additional evidence directly to the AAO within 30 days. However, as is clear in both the Form I-290B and the regulations, any extensions of time greater than 30 days require a showing of "good cause." In this matter, counsel chose not to submit a brief until, allegedly, June 21, 2004, and the record is devoid of any request for additional time in which to file a brief. Therefore, the AAO's summary dismissal and failure to consider the brief was not in error.

It should be noted for the record that, unless Citizenship and Immigration Services directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

Title 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.