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U.S. Citizenship  
and Immigration  
Services

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File: EAC 06 138 53607 Office: VERMONT SERVICE CENTER Date: **MAY 03 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)

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 Texas limited partnership and is allegedly a dairy farm. The petitioner seeks to employ the beneficiary as its president to open a new office 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 after concluding that the petitioner failed to establish (1) that the intended United States operation, within one year of approval of the petition, will support a managerial or executive position; or (2) that the beneficiary has been employed abroad 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 was faxed to and received by counsel on Friday, May 19, 2006. The director used the fax number provided in the Form I-907, Request for Premium Processing Service. An appeal was filed with the Vermont Service Center on June 21, 2006, 33 days after the decision was served by fax.

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).

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.

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. 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 May 19, 2006 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 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)(I).<sup>1</sup>

**ORDER:** The appeal is rejected.

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<sup>1</sup>Finally, counsel to the beneficiary asserts the following in the Form I-290B: "The USCIS erred in denying this petition for non-immigrant worker. A legal brief elaborating on these errors will follow in 30 days." However, as of the date of this decision, a brief or additional evidence has not been received. Moreover, on March 14, 2007, the AAO sent a fax to counsel requesting that he submit a brief and/or additional evidence, if these materials had previously been submitted, within five business days along with evidence of the date they were originally filed with CIS. As of the date of this decision, counsel has not responded to this request.

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 has been identified for the appeal.