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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

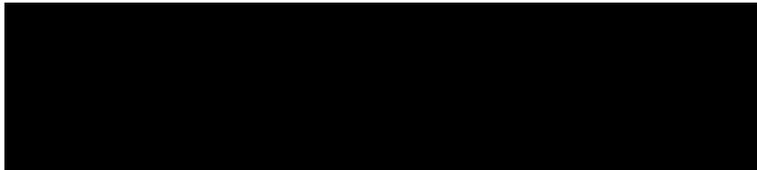
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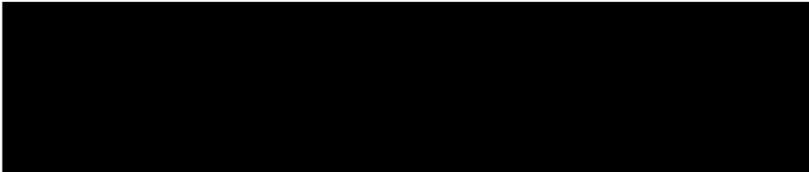
File: SRC 04 007 50508 Office: TEXAS SERVICE CENTER Date: FEB 01 2008

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 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 March 29, 2004, the Director of the Texas Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on May 11, 2005, the AAO summarily dismissed the appeal. On July 24, 2007, counsel to the petitioner filed a Motion to Reopen the AAO's decision in accordance with 8 C.F.R. § 103.5. The Motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), 103.5(a)(2), and 103.5(a)(4).

The petitioner filed this nonimmigrant visa petition seeking to extend the employment of the beneficiary 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 petitioner is a corporation organized under the laws of the State of Florida and describes its business in the Form I-129 as "import & export, sales computer, printers and accessories, service and maintenance thereof."¹

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial capacity.

Citizenship and Immigration Services (CIS) regulations require that motions to reopen be filed within 30 days of the underlying decision, 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]." 8 C.F.R. § 103.5(a)(1)(i). In this matter, the Motion to Reopen was filed on July 24, 2007, 804 days after the AAO's May 11, 2005 decision. The record indicates that the AAO's decision was mailed directly to the petitioner at its business address identified in the supporting documents, i.e., [REDACTED]

[REDACTED]. While the AAO understands that the basis for the Motion is ineffective representation, the Motion does not establish that this ineffective representation prejudiced the petitioner's ability to file the instant Motion on time, especially when the AAO gave notice by mail of its decision to the petitioner at its business address. When a party receives notice of a decision and fails to take the required action, an untimely motion may be denied even when the underlying unfavorable decision was the product of ineffective, or even fraudulent, representation by an attorney. *See generally Chen v. Gonzales*, 131 Fed. Appx. 734 (1st Cir. 2005) (unpublished); *Oliveira v. Gonzales*, 127 Fed. Appx. 720 (5th Cir. 2005). Therefore, the petitioner's failure to file a timely motion was not reasonable and was not beyond its control and, thus, the motion must be dismissed as untimely.²

¹It should be noted that according to both the organizational materials provided by the petitioner and Florida state corporate records, the name of the petitioner is [REDACTED]. It should also be noted that according to Florida state corporate records, the petitioner's corporate status in Florida was "administratively dissolved" on September 14, 2007. Therefore, since the corporation may not carry on any business except that necessary to wind up and liquidate its affairs, and the petitioner has not taken steps under Florida law to seek reinstatement, the company can no longer be considered a legal entity in the United States. *See Fla. Stat. 607.1421* (2006). Therefore, as this clearly and unequivocally renders the petitioner ineligible for the classification sought, the petition could not be approved for this reason even if the motion were not being dismissed for those reasons given herein.

²It is further noted that, according to the record of proceeding, the May 11, 2005 AAO decision was not mailed to the petitioner's purported former counsel apparently because the record did not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative, establishing a representational relationship

Furthermore, the motion shall be dismissed for failing to meet an applicable requirement. 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." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). 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), it must also be dismissed for this reason.

Finally, upon review, the AAO will also dismiss the motion for failure to meet the applicable requirements for motions to reopen set forth in 8 C.F.R. § 103.5(a)(2). This regulation states in pertinent part that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." In this matter, the petitioner offers no new evidence to support its claim that the beneficiary will be employed in the United States in a primarily managerial capacity. Accordingly, the motion must be dismissed.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden.

Finally, it should be noted for the record that, unless CIS directs otherwise, the filing of a motion 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. Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.

between the petitioner and [REDACTED]. The AAO's decision was mailed only to the petitioner at its business address. Therefore, the petitioner's assertion that counsel failed to notify it of the AAO's decision lacks credibility given that the decision was mailed to the petitioner and not to counsel.