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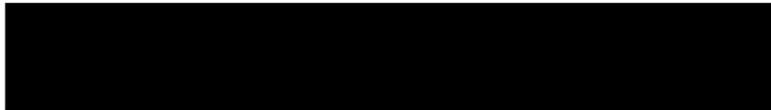
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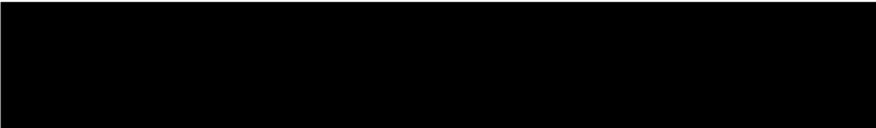
File: WAC 07 195 52404 Office: CALIFORNIA SERVICE CENTER Date: FEB 01 2008

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:** The Director of the California 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 as untimely pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(I).

The petitioner is a Delaware corporation, which describes its business in the Form I-129 as "consulting, software and hardware design development and architecture analysis for communication and applications domain." The petitioner seeks to employ the beneficiary as a "principal software engineer" 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 director denied the petition concluding that the petitioner failed to establish (1) that the beneficiary will be employed in a specialized knowledge capacity or that beneficiary possesses specialized knowledge; or (2) that the placement of the beneficiary at a worksite of an unaffiliated employer will not be merely labor for hire as prohibited by the L-1 Visa Reform Act of 2004. Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F).

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 Saturday, August 11, 2007 was sent both to counsel and the petitioner. An appeal was filed with the California Service Center on Friday, September 14, 2007, 34 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).

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). Here, the untimely appeal does not meet the requirements of a motion to reconsider or a motion to reopen. The petitioner failed to cite any pertinent precedent decisions establishing that the director's decision was based on an incorrect application of law or policy. Therefore, it does not meet the requirements of a motion to reconsider.

Likewise, the petitioner failed to state any "new facts" which could be considered in a reopened proceeding. Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.<sup>1</sup> The petitioner did not submit any additional evidence on appeal, and counsel's brief did not aver any new, previously unavailable facts for consideration. As such, there is no evidence submitted on appeal that may be considered "new" under 8 C.F.R. § 103.5(a)(2) and that could be considered a proper basis for a motion to reopen.

**ORDER:** The appeal is rejected.

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<sup>1</sup>The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).