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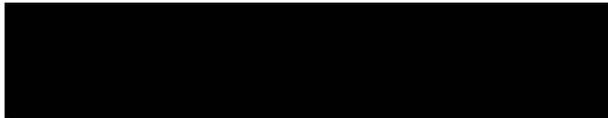
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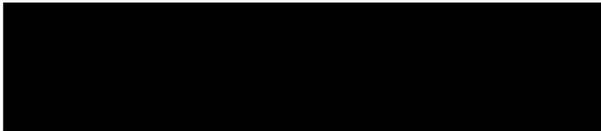
File: WAC 07 231 50471 Office: CALIFORNIA SERVICE CENTER Date: NOV 03 2008

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)

ON 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California 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)(1).

The petitioner filed this nonimmigrant petition seeking to employ 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, a Delaware corporation, is described as a silicon chip design company. The petitioner states that it is the parent company of the beneficiary's foreign employer, Silicon Design Solutions Vietnam. The petitioner seeks to employ the beneficiary as its Digital IC Design Manager for a period of three years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in the United States 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 sent to the petitioner on April 9, 2008. Counsel for the petitioner filed an appeal with the California Service Center on Tuesday, May 20, 2008, 41 days after the decision was served.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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)(1).

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).

In this matter, it is noted that the appeal does not meet the applicable requirements of a motion to reopen or reconsider. 8 C.F.R. § 103.5(a). 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.” *Id.* Furthermore, “[a] motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services (CIS) policy.” *Id.* Here, the petitioner offers no “new” evidence, which could not have been presented in the initial proceeding. Likewise, counsel fails to cite to any pertinent precedent decisions establishing that the director's decision was based on an incorrect application of law or CIS policy.<sup>1</sup>

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<sup>1</sup> Finally, it is noted that the brief submitted to the AAO on August 20, 2008 in response to the AAO's August 18, 2008 facsimile request was first inappropriately sent to the California Service Center on or about June 25, 2008. The AAO was not sent a copy of these documents within 30 days of the appeal as required by the Form

The untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed, the appeal must be rejected.

**ORDER:** The appeal is rejected.

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I-290B and 8 C.F.R. § 103.3(a)(2)(viii). Therefore, the AAO would not have considered the brief in its adjudication of the appeal because it was not properly filed, and the AAO would be obligated to summarily dismiss the current appeal for this reason if the appeal were not being rejected.