

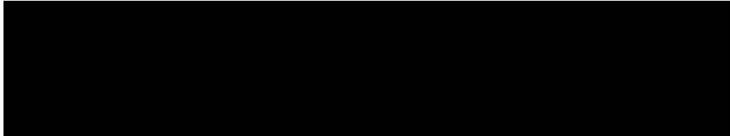
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U.S. Citizenship
and Immigration
Services

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File: WAC 07 231 50154 Office: CALIFORNIA SERVICE CENTER Date: OCT 02 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.

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

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 pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(I).

The petitioner is a California corporation and is allegedly a "silicon chip design company." The petitioner seeks 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 director denied the petition after concluding that the petitioner failed to establish that the beneficiary has been or will be employed 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 7, 2008. Counsel to the petitioner filed an appeal with the California Service Center on Tuesday, May 20, 2008, 43 days after the decision was served. 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).

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 decisions to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services (CIS)] policy." *Id.* Upon review of the Form I-290 and the brief and attachments submitted to the AAO on September 17, 2008, 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 an incorrect application of law or CIS policy.¹

Accordingly, the appeal is rejected and does not meet the requirements of a motion.

ORDER: The appeal is rejected.

¹Finally, it is noted that the brief submitted to the AAO on September 17, 2008 in response to the AAO's September 5, 2008 facsimile request was first inappropriately sent to the California Service Center on or about June 20, 2008. The AAO was not sent a copy of these documents within 30 days of the appeal as required by the Form 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.