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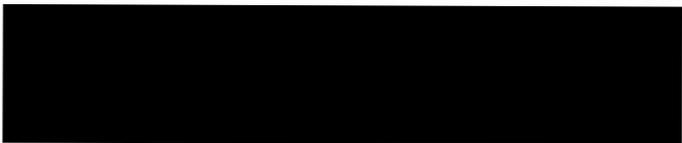
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
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Services

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File: WAC 08 007 52428 Office: CALIFORNIA SERVICE CENTER Date: MAR 04 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: On November 28, 2007, the Director of the California Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on August 1, 2008, the AAO dismissed the appeal. On September 8, 2008, counsel to the petitioner filed a Motion to Reconsider 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), and 103.5(a)(4).

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as its "art frame department manager" 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 limited liability company organized under the laws of the State of California and is allegedly an importer of tiles, frames, and other building materials.

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. The AAO dismissed the subsequently filed appeal on the basis that the petitioner failed to establish that the beneficiary would be primarily employed in a managerial or executive capacity and further determined that the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity.

U.S. Citizenship and Immigration Services (USCIS) regulations require that motions to reconsider be filed within 30 days of the underlying decision. 8 C.F.R. § 103.5(a)(1)(i). In this matter, the motion was filed on Monday, September 8, 2008, 38 days after the AAO's August 1, 2008 decision. The record indicates that the AAO's decision was mailed to both the petitioner at its business address and to its counsel of record. Accordingly, the motion is untimely and must be dismissed for that reason.¹

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.

¹It is noted that counsel attempted to file the instant motion directly with the AAO on August 28, 2008. However, the AAO immediately, and appropriately, returned the motion and the filing fee to counsel. The regulations clearly require that all motions be "submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction." 8 C.F.R. § 103.5(a)(1)(iii)(E). Likewise, the instructions on the first page of the AAO's August 1, 2008 decision indicate that all further inquiries be made to the office which originally decided the case. It is noted that all documents filed with USCIS must be filed "in accordance with the instructions on the form," which includes where the documents should be filed, and improperly filed documents shall not retain filing dates. See 8 C.F.R. § 103.2. Accordingly, counsel's attempt to file the motion directly with the AAO did not establish a receipt date of August 28, 2008.

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. The motion will be dismissed.

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.