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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



157

DATE: JUL 14 2011

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

Petitioner:

Beneficiary:



PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as untimely filed.

The petitioner filed the nonimmigrant petition seeking to extend the beneficiary's employment under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L) as an intracompany transferee employed in a managerial or executive capacity. The petitioner, a California corporation, states that it is engaged in international trade and investment in the United States. It claims to be an affiliate of [REDACTED], located in China. The beneficiary has been employed as the petitioner's president and chief executive officer since 2005 and the petitioner now seeks to extend his L-1A status for three additional years.

The director denied the petition based on three independent and alternative grounds, concluding that the petitioner failed to establish: (1) that the petitioner and the foreign entity have a qualifying relationship; (2) that the beneficiary was employed by a qualifying organization abroad prior to his transfer to the United States; and (3) that the beneficiary would be employed in the United States in a primarily managerial or executive capacity under the extended petition.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal with the office where the unfavorable decision was made within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a USCIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the adverse decision on June 4, 2009. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal and properly instructed the petitioner to submit the appeal to the California Service Center. The director explicitly advised the petitioner that the appeal may not be filed directly with the AAO.¹

The AAO notes that Form I-290B, Notice of Appeal or Motion, was initially submitted on July 6, 2009; however, the Form I-290B was submitted to the AAO, and not to the California Service Center, as required

¹ The petitioner claims on appeal that it was "given instructions which asked us to submit to Administrative Appeals Office in Washington, D.C." The petitioner attaches a copy of the Form I-292 Notice of Decision dated June 4, 2009 which advises the petitioner that "[t]he appeal may not be filed directly with the AAO." The instructions provided to the petitioner indicate that any brief, written statement, or other evidence *not filed concurrently* with the Form I-290B, Notice of Appeal, as well as any requests for additional time for submission of a brief or other evidence, must be sent directly to the AAO. Nowhere on the Form I-292 is the petitioner advised to file the Form I-290B with filing fee directly with the AAO.

by the regulation at 8 C.F.R. § 103.2(a)(7)(i). On July 7, 2009, the AAO returned the appeal to the petitioner, advising that the appeal must be filed with the USCIS office that issued the unfavorable decision. The petitioner properly filed the appeal with the service center on July 13, 2009, 39 days after the director's decision was issued. Consequently, the appeal in this matter was untimely filed.

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).

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). A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the petitioner offers no "new" evidence, which could not have been presented in the initial proceeding. Likewise, the petitioner's appeal is not supported by citations to appropriate statutes, regulations or precedent decisions. The petitioner asserts that the denial of the L-1 extension "is based on erroneous interpretation of your policies and is illegal as your Office went against legal precedences [*sic*] in adjudicating our case." The petitioner goes on to state that two previous petitions were "approved without any questions" and claims that the U.S. company's current status is "much better than the two previous applications we submitted." Although the appeal is accompanied by a statement from the petitioner, the petitioner makes no reference to any binding USCIS precedent, nor to the statute or regulations governing the L-1A visa classification. The prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Page 4

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 pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

ORDER: The appeal is rejected.