

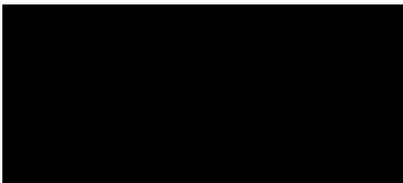
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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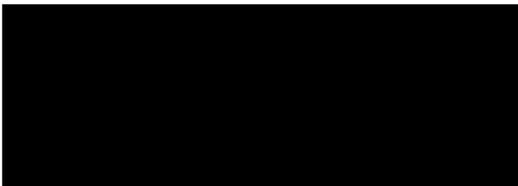
FILE: 

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:

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, Vermont Service Center, denied the petition for a nonimmigrant visa. The director granted the petitioner's subsequent motion to reopen and reconsider, and affirmed his decision to deny the petition on April 3, 2008. The petitioner, through former counsel, subsequently filed a late appeal, which the director rejected as untimely filed on August 21, 2008. On July 21, 2009, the petitioner, through current counsel, filed a motion to reopen and reconsider. The director dismissed the motion as untimely filed on September 18, 2009. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment 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 Texas corporation established in 2005, states that it is engaged in the retail sale of gift items and cell phone accessories. It claims to be a subsidiary of Kafi Trading, Inc., located in Karachi, Pakistan. The beneficiary was granted one year in L-1A status in order to open a new office in the United States and the petitioner now seeks to extend her status for three additional years so that she may continue to serve in the position of Director/President.

The director denied the petition on November 13, 2007, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. Former counsel for the petitioner filed a motion to reopen and reconsider on December 17, 2007. The director granted the motion, and affirmed his decision to deny the petition in a decision dated April 3, 2008.

On May 20, 2008, the former counsel filed an appeal. The director determined that the appeal was untimely filed. Pursuant to 8 C.F.R. § 103.2(a)(2)(v)(B), the director reviewed the appeal to determine if it meets the requirements of a motion to reopen or a motion to reconsider. The director found that the appeal, which consisted solely of counsel's statement on Form I-290B, did not meet the requirements of a motion. Therefore, the director rejected the appeal as untimely filed on August 21, 2008.¹

The petitioner, through current counsel, filed a motion to reopen and reconsider on July 21, 2009. On the Form I-290B, Notice of Appeal, the petitioner indicated that it was seeking reconsideration of a decision made with respect to the instant petition on August 20, 2007. The AAO notes that this petition was pending adjudication as of that date and was initially denied on November 13, 2007. In a brief submitted on motion, counsel indicated that "the instant motion is based upon the fraudulent acts perpetrated by individuals associated with the law office of [REDACTED] against the Petitioner and the Beneficiary." Counsel indicated that "the fraud perpetrated by the non-lawyer against the Petitioner and Beneficiary should constitute circumstances beyond the control of the Petitioner and should excuse the failure of the Petitioner to file earlier."

Although the petitioner referenced the receipt number of the instant petition on the Form I-290B, counsel also sought to reopen a Form I-140 Immigrant Petition for Alien Worker that was filed on behalf of the beneficiary and denied on January 10, 2008; Forms I-485 Applications to Register Permanent Residence or Adjust Status filed by the beneficiary and her spouse and denied on January 10, 2008; and a Form I-129, Petition for

¹ The AAO notes that the director should have forwarded the untimely appeal to the AAO after determining that it did not meet the requirements of a motion to reopen or reconsider or otherwise warrant favorable action. See 8 C.F.R. § 103.3(a)(2)(iv). Had the director forwarded the appeal to the AAO, the AAO would have rejected the late appeal as improperly filed pursuant to 8 C.F.R. § 103.3(a)(v)(B)(1).

[REDACTED]

a Nonimmigrant Worker, that was ostensibly filed by the petitioner on behalf of a different beneficiary and denied on June 22, 2009 [REDACTED]. Counsel emphasized that the motion was filed within 30 days of the director's decision to deny the I-129 Petition on June 22, 2009. Counsel indicated that the petitioner did not authorize the filing of that petition and has no knowledge of the beneficiary named therein. In all of these matters, counsel asserted that the petitioner alleges an "ongoing series of fraud perpetuated by a non-lawyer," specifically, a paralegal associated with prior counsel's firm.

The motion was accompanied by, *inter alia*, the following documents: a copy of the director's decision dated November 13, 2007 denying the instant petition; a notice of decision dated June 22, 2009 for a motion to reconsider filed with respect to the above-referenced Form I-129 filed on behalf of an [REDACTED] [REDACTED] an affidavit executed by the beneficiary, in which she states that she has no knowledge of this individual and never approved an immigration filing on his behalf; notices of decision pertaining to the denial of an I-140 Immigrant Petition filed on the beneficiary's behalf and subsequent motion; an affidavit executed by the beneficiary in which she indicates that a paralegal employed by former counsel, [REDACTED] gave the impression that he was an attorney and mishandled her case in several ways, including manufacturing of false evidence, filing on behalf of persons who are not company employees without the company's knowledge, and forging her signature on documentation submitted to USCIS; evidence that the petitioner and beneficiary filed a complaint against [REDACTED] with the Texas Unauthorized Practice of Law Subcommittee; and a letter addressed to former counsel advising him that the petitioner and beneficiary intend to file a grievance form with the State Bar of Texas, Office of the Chief Disciplinary Counsel.

In a decision dated September 18, 2009, the director noted that the petitioner seeks the reopening or reconsideration of the decision rendered by USCIS on August 21, 2008. The director emphasized that, pursuant to 8 C.F.R. § 103.5(a)(1)(i), any motion to reopen a proceeding must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. The director determined that the motion was not filed within the required time period and dismissed it pursuant to 8 C.F.R. § 103.5(a)(4).

The petitioner filed a timely appeal on October 16, 2009. On appeal, counsel states:

The Petitioner and the Beneficiaries received a notice from the USCIS dated June 22, 2009, denying the motion to reopen and reconsider an I-129 purportedly filed by the Petitioner on behalf of "[REDACTED]" Exhibit B (Decision Dated June 22, 2009). The Petitioner and Beneficiaries timely filed a motion to reopen/reconsider within 30 days of the decision dated June 22, 2009, in which the USCIS denied the purported petition filed by [the petitioner]. The USCIS received the motion on July 21, 2009 – squarely within the 30 days prescribed by law. . . .

The USCIS denied the petition on September 18, 2009 stating that "you seek the reopening or reconsideration of the decision rendered by the United States Citizenship and Immigration Services (USCIS) on August 21, 2008 . . ." and "Your motion to reopen or reconsider was not submitted within the required 33 days."

The USCIS denied the petition on factual grounds and mistakenly concluded that a previous decision dated August 21, 2008 was being appealed. However, the USCIS decision that was being appealed was actually dated June 22, 2009 Thus, the USCIS denied the petition based on an error that they made without giving either the Petitioner or the Beneficiaries an opportunity for meaningful review of the petition. Nothing in any of the USCIS decisions identifies the rampant fraud and egregious misconduct that the Petitioner and the Beneficiaries have endured.

Counsel also questions why an individual named [REDACTED] was identified in the Notice of Decision, noting that this individual is "not associated with either the Petitioner or the Beneficiaries." The record reflects that a [REDACTED] signed in the capacity of "manager" of the petitioning organization on the Form I-129, Form G-28, and supporting letter that were submitted in support of the instant petition in February 2007.

Counsel asserts that "[h]ad it been realized that a motion to reconsider/reopen was being submitted for the June 22, 2009; the decision would surely have been different as the motion to reconsider was timely filed within 30 days of the June 22, 2009 decision." Finally, counsel asserts that the petitioner has never had an opportunity for a review due to the misrepresentations of the prior preparers, and contends that the petition is worthy of approval.

Upon review, counsel's assertions are not persuasive and the appeal will be dismissed. The record reflects that the most recent decision issued with respect to the instant petition was the director's rejection of the petitioner's late appeal on August 21, 2008.

As noted in the director's decision, the regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that any motion to reopen or reconsider an action by USCIS be filed within 30 days of the decision that the motion seeks to reopen or reconsider, except that failure to file before this period expires may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the control of the petitioner. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The petitioner filed a motion to reopen and reconsider on July 21, 2009, 11 months after the director's most recent adverse decision in this matter. Therefore, the director properly dismissed the motion as untimely.

The record reflects that the director issued an adverse decision on June 22, 2009 on a motion that was allegedly filed by the petitioning company (EAC 07 238 52158). However, the petitioner did not reference this petition on the Form I-290B, Notice of Appeal or Motion, as the decision that is being appealed. Rather, it appears that the petitioner is attempting to reopen every decision rendered by USCIS on every petition filed or allegedly filed by the petitioning company based on a claim of ineffective assistance of a paralegal associated with prior counsel. 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). As such, each petition filed by the petitioner requires a separate appeal or motion.

Therefore, although the director denied a motion to reopen a petition filed by the petitioner on June 22, 2009, the petitioner's subsequent motion cannot be deemed to be timely as it relates to a different nonimmigrant petition in which the last adverse decision was dated August 21, 2008. The petitioner cites no other alleged

error on the part of the director. If the petitioner wanted to file a motion to reopen or reconsider with respect to the June 22, 2009 decision filed on behalf of a different beneficiary, then it should have filed a Form I-290B identifying the corresponding receipt number for that petition [REDACTED] as the relating petition.

A remaining issue is whether the petitioner has established a claim of ineffective assistance of counsel against prior counsel. In dismissing the late motion, the director noted that "the delay in filing has not been found to be reasonable and beyond your control," but did not directly address the claims made by the petitioner and counsel on motion with respect to its prior representation. Upon review, the petitioner has failed to fulfill the prerequisites for allegations of ineffective assistance of counsel. See *Matter of Assaad*, 23 I&N Dec. 553 (BIA 2003); *Matter of Grijalva*, 21 I&N Dec. 472 (BIA 1996); *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

Any appeal or motion that is based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

While the petitioner has submitted an affidavit from the beneficiary, it alleges misconduct on the part of a paralegal working at prior counsel's firm and does not set forth in detail any agreement that was entered into with counsel with respect to the instant petition. The affidavit does not set out alleged facts necessary to show a *prima facie* claim of ineffective assistance of counsel. *Matter of Lozada*, 19 I&N Dec. at 637. This affidavit should have identified what the petitioner's former counsel did or failed to do and should have identified how former counsel's action or inaction negatively affected the outcome of the respondent's case. While former counsel is named in the affidavit, the allegations are against a paralegal rather than against former counsel. See *Matter of Grijalva*, 21 I&N Dec. at 474.

The petitioner has provided evidence that it notified prior counsel of its intent to file a grievance with the Texas State Bar. The petitioner has not submitted evidence that it actually filed a complaint with the Office of the Chief Disciplinary Counsel. The petitioner has provided evidence that it filed a complaint against a paralegal, [REDACTED] with the Texas Unauthorized Practice of Law Subcommittee. The petitioner has also documented its filing of an offense report against [REDACTED] with the Houston Police Department.

While the allegations in this case are concerning, the AAO notes that the petitioner's claims are primarily leveled against a paralegal rather than a licensed attorney or accredited representative. There is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. See 8 C.F.R. § 292.1; see also *Hernandez v. Mukasey*, 524 F.3d 1014 (9th Cir. 2008) ("non-attorney immigration consultants simply lack the expertise and legal and professional duties to their clients that are the necessary preconditions for ineffective assistance of counsel claims"). The AAO only considers complaints based upon ineffective assistance against accredited representatives. Cf. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)

(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

As the petitioner has not established an ineffective assistance of counsel claim, the AAO cannot find that the director abused his discretion in determining that the petitioner should not be excused for its failure to file the motion within the period allowed. Accordingly, the AAO finds that the director properly dismissed the petitioner's untimely motion.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.