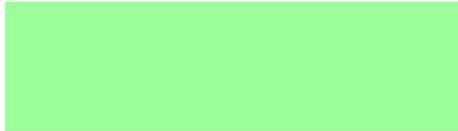


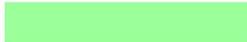
(b)(6)

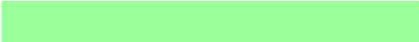


U.S. Citizenship
and Immigration
Services



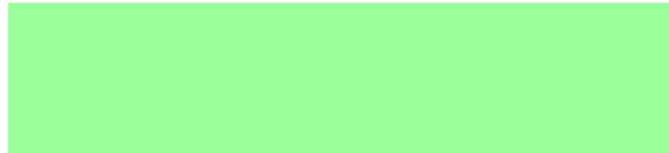
DATE: **DEC 18 2014** OFFICE: VERMONT SERVICE CENTER

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)

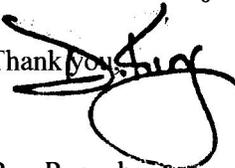
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you 

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO). The appeal was summarily dismissed. The matter is now before the AAO on motion to reopen. The motion will be dismissed.

The petitioner is a Texas corporation that seeks to continue to employ the beneficiary as its director for an additional two years 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).

On June 27, 2013, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. The petitioner appealed the director's decision and the appeal was summarily dismissed on May 29, 2014. Namely, in dismissing the appeal, we determined that the record lacked an appellate brief or other supporting evidence, despite the fact that counsel marked Box B on the Form I-290B to indicate his intention to supplement the record within thirty days of filing the appeal.

On motion, counsel contends, and provides evidence to demonstrate, that an appellate brief was, in fact, submitted subsequent to the filing of the appeal. Counsel asks that we reopen the proceeding in order to consider the appellate brief and corresponding evidence. In support of the motion, the petitioner offers, in part, a return postal receipt in order to establish that an appellate brief was submitted subsequent to the filing of the appeal, as claimed. The postal receipt shows that the supplemental evidence submitted subsequent to the appeal was sent via express mail to the following address:

Thus, the postal receipt indicates that the supporting brief and accompanying evidence were not sent to the AAO office as required in the regulations at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to Form I-290B, which are incorporated into the regulations pursuant to 8 C.F.R. § 103.2(a)(1). The Form I-290B filing instructions expressly stated that any time the affected party chooses not to file an appellate brief simultaneously at the time of filing the appeal, but rather within the allowed 30-day time period, the brief and/or any additional evidence must be submitted directly to the AAO at

The brief and supporting evidence was not to be sent to the Vermont Service Center or any other federal office.

In the matter at hand, the affected party sent the appeal and supporting evidence to the following address:

As the affected party did not follow the applicable instructions, we were not in possession of the appeal brief or supporting evidence at the time of our review, thus resulting in a summary dismissal of the appeal. Further, the information included in the postal receipt indicates that the brief was not filed within the allowed 30 days following the filing of the appeal and thus did not reach the designated destination until August 29, 2013, or 41 days after the Form I-290B was filed.

The regulations at 8 C.F.R. § 103.5(a)(2) state, 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.

In the instant case, counsel's motion is primarily based on an appellate brief and evidence that were available prior to our review of the record on appeal. As such, these documents cannot be deemed as new evidence. Moreover, the record indicates that counsel's appellate brief and other supporting evidence were not included in the record as part of the appeal proceeding due to the petitioner's error in failing to mail the supporting evidence to the proper address. Therefore, there is no evidence that our summary dismissal of the petitioner's

appeal was based on our error or oversight. Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4), which states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

As a final note, the proper filing of a motion to reopen and/or reconsider does not stay our prior decision to dismiss an appeal or extend a beneficiary's previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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.

ORDER: The motion is dismissed.