

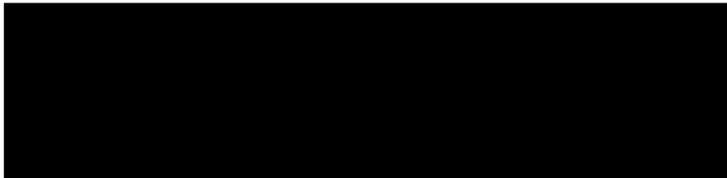
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U.S. Citizenship
and Immigration
Services

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File: WAC 05 054 51175 Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2007

IN RE: Petitioner:
Beneficiary:



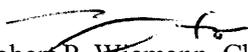
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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.


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 provider of banking services. The petitioner originally sought to extend the employment of the beneficiary as its president 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). However, in response to the director's Request for Evidence, the petitioner indicated that the beneficiary would be more appropriately classified as an L-1B nonimmigrant possessing specialized knowledge. The director denied the petition after concluding that the petitioner failed to establish that the beneficiary possesses such specialized knowledge.

The record indicates that the decision of the director was mailed to the petitioner on September 5, 2005. A Form I-290B, Notice of Appeal to Administrative Appeals Unit (AAU), was received by the California Service Center on October 4, 2005, 29 days after the decision was mailed. However, the Form I-290B included the incorrect filing fee of \$110.00. A new filing fee of \$385.00 became effective on September 28, 2005. 70 Fed. Reg. 50954-50957 (Aug. 29, 2005); 8 C.F.R. § 103.7. On October 4, 2005, the California Service Center returned the Form I-290B to counsel to the petitioner and indicated that the incorrect filing fee was included. The California Service Center received the resubmitted Form I-290B with the proper \$385.00 filing fee on November 2, 2005, along with a letter from counsel dated October 24, 2005 asking that the appeal be accepted *nunc pro tunc*. Counsel specifically makes reference to the appeal instructions in the Form I-290B sent by the director on September 5, 2005, which identify the filing fee as \$110.00.

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. Title 8 C.F.R. § 103.2(a)(7)(i) requires Citizenship and Immigration Services (CIS) to reject any petition or application filed with the incorrect filing fee. Likewise, filings which were rejected because they were submitted with incorrect filing fees do not retain filing dates. Therefore, in this matter, CIS is required to reject the appeal as untimely filed. Although counsel submitted the I-290B within 33 days of service of the decision, this submission included the incorrect filing fee. Therefore, as this filing did not retain a filing date, the actual filing date for the Form I-290B is November 2, 2005, 58 days after the decision was served by mail. 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).

While the AAO notes that the prior version of Form I-290B and the instructions in the California Service Center's September 5, 2005 decision identified the proper filing fee for the appeal as \$110.00, this decision was dated and mailed along with the Form I-290B 23 days before the effective date of the filing fee change to \$385.00. Moreover, as the fee change properly appeared in the Federal Register in accordance with law, counsel was charged with notice of the appropriate fee change. See 70 Fed. Reg. 50954-50957 (Aug. 29, 2005). Finally, as CIS, which includes both the California Service Center and the AAO, lacks the authority to authorize an untimely appeal which failed to hold a filing date due to the submission of an incorrect filing fee, CIS is compelled to reject the appeal. Title 8 C.F.R. § 103.3(a)(2)(v)(B)(I) states in pertinent part that "[a]n appeal which is not timely filed within the time allowed must be rejected as improperly filed." Therefore, under the regulations, CIS lacks the power to authorize a "*nunc pro tunc*" filing as requested by counsel.

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). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

ORDER: The appeal is rejected.