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U.S. Citizenship  
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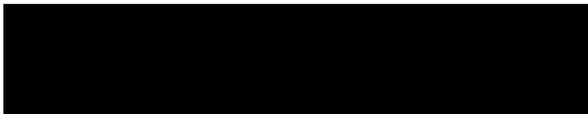
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**PUBLIC COPY**



File: SRC 02 213 51142 Office: TEXAS SERVICE CENTER Date: MAR 27 2007

IN RE: Petitioner:  
Beneficiary:



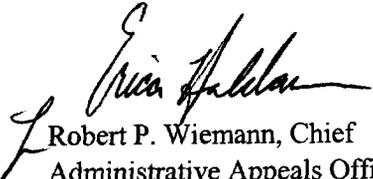
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON 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 nonimmigrant visa petition was denied by the director, Texas Service Center. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal and affirmed the director's decision to deny the petition. The matter is now before the AAO on a motion to reopen. The motion will be rejected as untimely filed.

The petitioner filed this petition seeking to extend the employment of its president/chief executive officer as a 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 corporation organized in the State of Florida, as a holding company for United States business ventures by the foreign entity. The petitioner claims that it is a subsidiary of the beneficiary's foreign employer [REDACTED], located in Colombia. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay for an additional three years.

The director denied the petition on April 25, 2003, concluding that the record contains insufficient evidence to demonstrate: (1) that the beneficiary will be employed in a managerial or executive capacity; and (2) that a qualifying relationship exists between the foreign company and the United States entity. The AAO affirmed that decision on appeal and noted for the record that the petitioner also failed to show that the U.S. company and the foreign company are doing business on a continuous and systematic basis; and, that the beneficiary has been employed in a managerial or executive capacity by the foreign entity. The AAO's decision was issued on January 28, 2005. The AAO properly advised the petitioner of the requirements for filing a motion to reopen or reconsider.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that any motion to reopen or reconsider an action by U.S. Citizenship and Immigration Services (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 that the delay was reasonable and was beyond the control of the petitioner. Counsel filed the instant motion to reopen on June 20, 2005, nearly five months after the issuance of the AAO's decision. On motion, counsel asserts that the AAO's determination was in error. Counsel submits additional evidence to address the grounds of the director's denial and the findings of the AAO.

As a matter of discretion, the petitioner's failure to file the motion within the period allowed will not be excused as either reasonable or beyond the control of the petitioner. Accordingly, the motion will be rejected as untimely filed.

Although the motion will be rejected as untimely filed, the AAO further notes that counsel has not furnished any new facts of evidence that would meet the requirements of a motion to re-open. The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "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." Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.<sup>1</sup>

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<sup>1</sup> The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

On the motion, counsel for the petitioner submits: (1) Form W-2 issued to the beneficiary for the year 2004; (2) photographs of the petitioner's business in Rhode Island; (3) Certificate of Incorporation of the U.S. entity dated February 24, 2005; (4) two different commercial lease agreements for the U.S. entity; (5) an organizational chart of the U.S. entity; (6) Form W-2 for 2003 for three individuals, including the beneficiary; (7) Form 941, Employer's Quarterly Federal Tax Return for 2003 and 2004; (8) Form 1099 for 2003 issued by the U.S. entity; (9) Form 1120, U.S. Corporation Income Tax Return, for 2003 for the U.S. entity; (10) stock certificate, number 00, dated October 4, 2000, stating that the beneficiary is the holder of 500 shares of the U.S. entity; and stock certificate, number 1, dated October 4, 2000, stating that [REDACTED] is the holder of 500 shares of the U.S. entity; (11) translated commerce registry of the foreign company; (12) translated commercial lease agreement of the foreign company; (13) bank statements of the foreign company in 2004; (14) copy of the income tax return for the foreign company in the Spanish language; (14) financial statements of the foreign company for 2002, 2003 and 2004; (15) photographs of the foreign company; (16) copies of advertisements of the foreign company in a media outlet; (17) copies of wire transfers in Spanish; (18) copies of contracts in Spanish; (19) a company overview of the foreign company; (20) payroll records of the foreign company from November 2002 through December 2004; and, (21) invoices for the foreign company in 2004. As argument, counsel provides a brief.

The nonimmigrant petition was filed on June 28, 2002. In reviewing the submitted documents, it appears that most of the "new" documentation is dated after June 28, 2002. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Thus, even if the motion had been timely filed, the AAO would not consider any of the documentation dated after June 28, 2002.

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). Although some of the documentation submitted by the petitioner is dated prior to the filing of the instant petition and may be reviewed, the evidence does not qualify as "new" under the regulations. For example, the stock certificates of the U.S. company are dated October 4, 2000 which is prior to the date the instant petition was filed. However, the petitioner did not provide any explanation as to why the petitioner was unable to obtain these documents prior to submitting its motion. Therefore, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

Although counsel has submitted a brief entitled "Motion to Re-open," counsel does not submit any documentation that would meet the requirements of a motion to reopen.

Finally, it should be noted for the record that, unless CIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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. The motion will be rejected as untimely filed and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is rejected as untimely filed.