

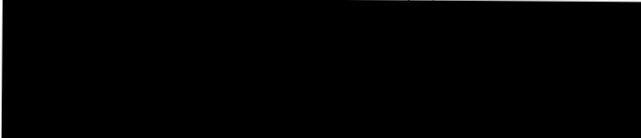


U.S. Citizenship
and Immigration
Services

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File:

LIN 05 110 51433

Office: NEBRASKA SERVICE CENTER

Date: NOV 01 2007

IN RE:

Petitioner:

Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Nebraska Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

As a threshold issue, it must be noted that the director has already issued a determination as to the untimely filing of this appeal. Although this finding by the director was correct for the reasons discussed herein, he did not have jurisdiction to make this determination. Specifically, the regulation at 8 C.F.R. § 103.3(a)(2)(iv) states in pertinent part the following:

If the reviewing official will not be taking favorable action or decides favorable action is not warranted, that official shall promptly forward the appeal and the related record of proceeding to the AA[O] in Washington, D.C.

Therefore, to the extent that the director's decision entered a determination as to the appeal's timeliness, it is hereby withdrawn, as jurisdiction with regard to the appeal remains with the AAO, not with the director whose decision is being appealed.

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 appeal within 30 days of 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 Citizenship and Immigration Services (CIS) 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 decision on March 10, 2006. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. The appeal was received by CIS on October 13, 2006, or ten months after the decision was issued. Therefore, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) states that an appeal which is not filed within the time allowed must be rejected as improperly filed. Accordingly, the appeal in the instant case will be rejected as untimely filed.

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 or a motion to reconsider, 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 did, in fact, consider the petitioner's untimely submission as a motion and dismissed it pursuant to 8 C.F.R. § 103.5(a)(4) based on the determination that the petitioner failed to meet the provisions of 8 C.F.R. §§ 103.5(a)(2) or (3) for a motion to reopen or motion to reconsider, respectively.

ORDER: The appeal is rejected as untimely filed.