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U.S. Department of Justice  
Immigration and Naturalization Service

Public Copy

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: EAC 99 112 50173 Office: Vermont Service Center Date: 11 SEP 2002

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:

[Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen 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 the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The case will be remanded for further consideration.

8 C.F.R. 103.3(a)(2)(i) states:

*Filing appeal.* The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by Sec. 103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

8 C.F.R. 103.3(a)(2)(v)(B)(2) states:

*Untimely appeal treated as motion.* If an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2) of this part or a motion to reconsider as described in 8 C.F.R. 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The petition was denied on August 9, 2000. The petitioner was allowed 30 days to file an appeal, plus three additional days for mailing, pursuant to regulations at 8 C.F.R. 103.3(a)(2) and 8 C.F.R. 103.5a(b).

The petitioner submitted the Form I-290B, Notice of Appeal, and supporting documentation to the Service Center on September 1, 2000. However, the appeal was not accepted because it had not been properly filed. On September 13, 2000, the Service Center provided the petitioner with a notice requesting a "check/money order payable to the United States Immigration and Naturalization Service." On September 27, 2000, the petitioner submitted a check with the proper fee, the Form I-290B, a statement from counsel, and additional evidence in support of the petition.

The proper remittance was not received until September 27, 2000, more than forty-five days subsequent to the denial of the petition. Therefore, the appeal has not been timely filed, and must be treated as a motion.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. Review of the record indicates that the appeal meets this requirement [although the Administrative Appeals Office ("AAO") takes no position at this time as to whether the newly submitted documents establish eligibility].

According to 8 C.F.R. 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. Because, in this case, the disputed decision was rendered by the director, the AAO has no jurisdiction over this motion and the case must be remanded to the director for a decision pursuant to the regulations governing motions to reopen.

**ORDER:** The petition is remanded to the director for further action in accordance with the foregoing.