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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536

[REDACTED]

File: WAC 99 189 52038 Office: California Service Center

Date: MAY 12 2003

IN RE: Petitioner:
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]

PUBLIC COPY

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected as untimely filed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

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) states:

Untimely appeal.

(1) *Rejection without refund of filing fee.* An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

(2) *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 March 28, 2001. 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, on April 27, 2001. However, the appeal was not accepted because it had not been properly filed. On June 26, 2001, the Service Center issued a notice requesting that the petitioner “submit a check or money order made payable to INS.” On July 27, 2001, the petitioner submitted the Form I-290B with the proper fee.

The petitioner’s appeal in this case was not properly filed until July 27, 2001, four months subsequent to the denial of the petition. It must therefore 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 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.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Bureau policy. Review of the record indicates that the untimely appeal does not meet either of these requirements.

The petitioner offers no evidence pertaining to his eligibility under section 203(b)(2)(B) of the Act, the corresponding regulation at 8 C.F.R. § 204.5(k)(4)(ii), or the eligibility factors set forth in *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998). Furthermore, the petitioner does not provide any new facts pertaining to his eligibility for a national interest waiver, any clear reason for reconsideration, or any precedent decision to establish that the decision was based on an incorrect application of law or Bureau policy. Finally, the petitioner has not addressed any of the director's specific findings set forth in the notice of denial.

As the appeal was untimely filed and does not meet the requirements of a motion to reopen or reconsider, the appeal will be rejected.

ORDER: The appeal is rejected.