



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: FEB 25 2008
SRC 06 242 51778

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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

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 complete appeal within 30 days after 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).

The record indicates that the director issued the decision on April 25, 2007. The director properly gave notice to the petitioner that the petitioner had 33 days to file the appeal. The petitioner dated the appeal June 1, 2007, 38 days after the date of the denial, but the postmark on the appeal envelope shows that the petitioner did not mail the appeal until June 4, 2007. Citizenship and Immigration Services (CIS) received the appeal on June 8, 2007, or 45 days after the decision was issued. Accordingly, the appeal was untimely filed.

The AAO notes that the appeal includes a copy of Form AR-11, Alien's Change of Address Card. The petitioner dated this form April 15, 2007, ten days before the denial notice. The Form AR-11 indicated that the petitioner had moved from [REDACTED] Flushing, New York, to [REDACTED] also in Flushing. It is not clear when, if at all, the petitioner mailed this change of address notice to CIS. The record of proceeding does not contain the original Form AR-11, and the first time that the copy appears in the record is on appeal. The director mailed the denial notice to the [REDACTED] address that appeared on the Form I-140 petition, but the petitioner obviously received the notice because the appeal includes a copy of the denial notice.

Furthermore, CIS records indicate that the petitioner filed a Form I-485 adjustment application (receipt number LIN 07 264 57154) on August 13, 2007, and that the petitioner continues to use the [REDACTED] address in connection with that application. Absent persuasive evidence that the petitioner sought to notify CIS of a change of address prior to the issuance of the denial notice, the AAO finds that the director did not err in sending the denial notice to the Elder Avenue address in April 2007.

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 marked the appeal as untimely and forwarded the matter to the AAO, thereby declining to treat the untimely appeal as a motion.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.