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U.S. Citizenship
and Immigration
Services

B6

[Redacted]

FILE: [Redacted]
SRC 03 022 50611

Office: TEXAS SERVICE CENTER Date: JAN 22 2008

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

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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

cc: [Redacted]

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and certified the decision to the Administrative Appeals Office (AAO) on September 22, 2004. On November 9, 2004, the petitioner filed an appeal. On December 23, 2005, the AAO affirmed the director's decision as to the ability to pay the proffered wage. The petitioner's 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 of 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 date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued her decision on certification on September 22, 2004. The petitioner¹ dated the appeal October 22, 2004 and the notice of appeal was received by the director on November 9, 2004, 48 days after the decision was issued. Accordingly, the appeal was untimely filed. The AAO subsequently issued a decision on December 23, 2005, withdrawing the director's decision to invalidate the labor certification but affirming the director's decision to deny the petition based on the petitioner's failure to establish its continuing financial ability to pay the proffered wage.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, it is noted that the issues raised by the petitioner relevant to the invalidation of the labor certification and the petitioner's ability to pay the proffered wage have already been discussed in the AAO's decision of December 23, 2005. As such, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ The petitioner appeared to have filed the appeal and will be treated as representing itself. Counsel of record will be provided a copy of this decision as a courtesy.