



B7

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: [Redacted] Office: Texas Service Center

Date: 17 OCT 2002

IN RE: Petitioner: [Redacted]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5)

IN BEHALF OF PETITIONER:



**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 preference visa petition was denied by the Director, Texas Service Center. The director rejected a subsequent appeal as late and determined that the appeal did not constitute a motion. The petitioner filed an appeal from that decision that is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

According to 8 C.F.R. 103.3(a)(2)(i), an appeal must be filed with the office where the unfavorable decision was made within 30 days after service of the decision. 8 C.F.R. 103.5a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period.

We note the following chronology in this case. On April 27, 2001, the director denied the petition on its merits. That decision stated, "if an appeal is desired, the Notice of Appeal shall be executed and filed with this office." (Emphasis in original.) The appeal, Form I-290B, states in the instructions, "you must file your appeal with the Immigration and Naturalization Service (INS) office which made the unfavorable decision." 8 C.F.R. 103.2(a)(1) provides that every appeal must be filed in accordance with the instructions on the form. The petitioner filed an appeal, sending it by mail to this office. On June 28, 2001, this office forwarded the appeal to the correct office, the Texas Service Center, that issued the original decision. That office received the appeal on July 3, 2001, more than 33 days after the denial.

On August 2, 2001, the director rejected the appeal as late. The director cited 8 C.F.R. 103.3(a)(v)(B) [sic], referring to 8 C.F.R. 103.3(a)(2)(v)(B), that provides that an untimely appeal must be treated as a motion. The director noted that neither the petitioner nor counsel asserted any new facts or put forth any legal arguments on appeal. As such, the director concluded that the appeal did not meet the requirements of a motion to reopen or reconsider under 103.5(a)(2) and (3).

The petitioner appealed the August 2, 2001 decision, asserting that the initial appeal was not filed as a motion and jurisdiction lies with the Administrative Appeals Office, not the director. Once again, the petitioner sent the appeal to this office. On September 4, 2001, this office forwarded the appeal to the director, who received it on September 12, 2001. The instant appeal was therefore filed untimely.

8 C.F.R. 103.3(a)(2)(v)(B) states that an appeal that is not filed within the time allowed must be rejected as improperly filed; however, 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.

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 Service policy.

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. In this case, the disputed decision was rendered by the director;



the Administrative Appeals Office has no jurisdiction over this motion. The director must issue a decision on this motion pursuant to the regulations governing motions to reopen and/or reconsider.

**ORDER:** The appeal is rejected.