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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
SRC 04 198 52723

Office: TEXAS SERVICE CENTER

Date: **JUL 23 2009**

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:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the 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 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 the decision on July 15, 2005. The appeal was received by the director on November 7, 2005, 115 days after the decision was issued.¹ Accordingly, the appeal was untimely filed.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, it must be rejected.

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 USCIS 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).

¹ The record contains a copy of a cover letter signed by counsel and a copy of a Form I-290B, also signed by counsel. The cover letter, dated August 11, 2005, indicates that the I-290B was being submitted to the Texas Service Center at that time. However, there is no evidence in the record or in internal U.S. Citizenship and Immigration Services (USCIS) records showing that a Form I-290B was submitted to USCIS on or around August 11, 2005. Instead, the record shows that a Form I-290B was received by the Texas Service Center on October 12, 2005. The I-290B was returned by the Texas Service Center because counsel had used an obsolete version of the form. Counsel submitted another Form I-290B to the Texas Service Center on October 24, 2005. The record contains a notice from the Texas Service Center indicating that the check accompanying that Form I-290B had not been signed. A properly signed check was received by USCIS on November 7, 2005. In order to be properly filed, an application must have the proper filing fee. 8 C.F.R. § 103.2(a)(7). Therefore, the Form I-290B in this case was properly filed on November 7, 2005. It is noted that, had the October 12, 2005 submission of the obsolete Form I-290B been accepted by the Texas Service Center, the appeal would still have been untimely.

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, the appeal will not be treated 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 will be rejected.

ORDER: The appeal is rejected.