



U.S. Citizenship
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Services

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FILE: [REDACTED]
SRC 07 171 50161

Office: TEXAS SERVICE CENTER Date: OCT 01 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:



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.

Perry Rhew
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 and improperly filed by a party who lacks standing pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

The petitioner is an advertising and publishing business. It seeks to employ the beneficiary permanently in the United States as a production supervisor. As required by statute, a labor certification approved by the Department of Labor accompanied the petition. The director determined that the petitioner had not demonstrated its continuing ability to pay the proffered wage beginning on the priority date of the visa petition and denied the petition accordingly.

The record of proceeding contains a properly executed Form G-28 (Form G-28), Notice of Entry of Appearance as Attorney or Representative for the beneficiary's representative. Additionally, the Form I-290B appellate form was filed and signed by the beneficiary. U.S. Citizenship and Immigration Services' (USCIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). No evidence suggests that the petitioner consented to the filing of the appeal.

As the appeal was not properly filed, and it is unclear whether or not the petitioner consented to having an appeal filed on its behalf, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

Further, 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 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 January 16, 2008. It is noted that the director properly gave notice to the petitioner¹ that it had 33 days to file the appeal. Although counsel dated the appeal February 14, 2008, it was postmarked February 20, 2008, and received by the director on Wednesday, February 20, 2008, 35 days after the decision was issued. Accordingly, the appeal was untimely filed. The director forwarded the matter to the AAO.

Neither the 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, the appeal must be rejected. Nevertheless, 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.

¹According to the records of the Department of State, New York State, as accessed at <http://appsex8.dos.state.ny.us> on September 23, 2009, the petitioner, Chinese Consumer Weekly, Inc., became inactive on December 28, 2004 and is in dissolution. This is an independent ground for dismissing this appeal.

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 U.S. Citizenship and Immigration Services 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, the untimely appeal does not meet the requirements of a motion to reconsider or reopen. Although counsel on appeal requested 30 days to submit a legal brief and/or additional evidence, the AAO has received nothing further.²

ORDER: The appeal is rejected for the above stated reasons,³ with each considered as an independent and alternative basis for rejection.

² The regulation at 8 CFR §§ 103.3(a)(2)(vii) and (viii) state that an affected party may make a written request to the AAO for additional time to submit a brief and that, if the AAO grants the affected additional time, it may submit the brief directly to the AAO.

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).