

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

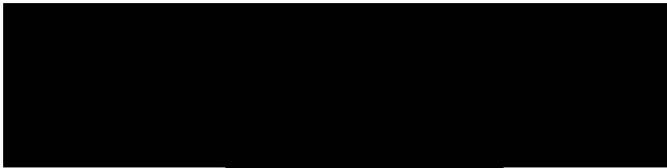
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B6



FILE: [Redacted]
SRC 09 093 50877

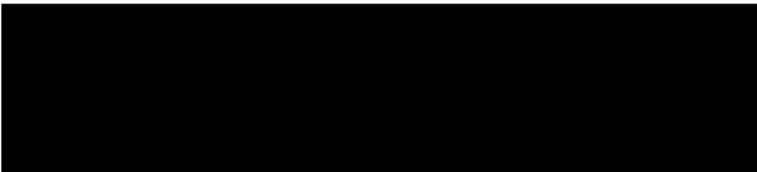
Office: TEXAS SERVICE CENTER

Date: MAR 08 2010

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

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker 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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
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 pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The petitioner claims to be a commercial painting business. It seeks to permanently employ the beneficiary as a hazardous material removal worker. The petitioner requests classification of the beneficiary as an unskilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, certified by the U.S. Department of Labor.

The director denied the petition on July 15, 2009. The decision contains a notation that it was mailed to the petitioner on August 13, 2009. The decision states that the petitioner failed to establish its ability to pay the beneficiary the proffered wage from the priority date until the beneficiary is issued lawful permanent residence. The decision properly gave notice to the petitioner that it had 33 days to file the appeal.

Counsel filed the instant appeal on September 17, 2009, 35 days after the decision was issued. 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 by U.S. Citizenship and Immigration Services. *See* 8 C.F.R. § 103.2(a)(7)(i). 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)(1) states that "[a]n appeal which is not timely filed within the time allowed must be rejected as improperly filed."

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.

A motion to reopen must state the new facts to be provided 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 policy. 8 C.F.R. § 103.5(a)(3). In addition, a motion to reconsider must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet these requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The appeal does not meet the requirements of a motion to reopen. On appeal, the petitioner does not offer any facts to address the ground of the denial. Likewise, the petitioner does not cite to any pertinent precedent decisions establishing that the director's decision was an incorrect application of law or policy. Instead, on Form I-290B, Notice of Appeal or Motion, counsel states: "[w]e are hereby filing an appeal. A brief and or supporting evidence shall be submitted in 30 days. Additional

time is needed to provided [sic] the requested evidence to establish eligibility for benefits." To date, the AAO has not received a brief or supporting evidence for the appeal.¹

Therefore, the appeal must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

ORDER: The appeal is rejected.

¹If the AAO did not reject the appeal as untimely filed, it would be summarily dismissed. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO "shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal would be summarily dismissed.