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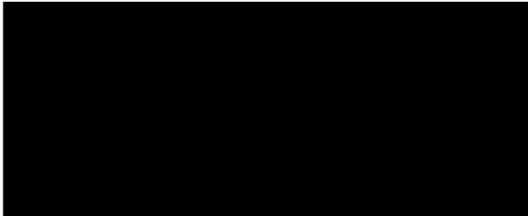
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE:

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LIN 06 238 53391

Office: NEBRASKA SERVICE CENTER

Date: **MAY 27 2010**

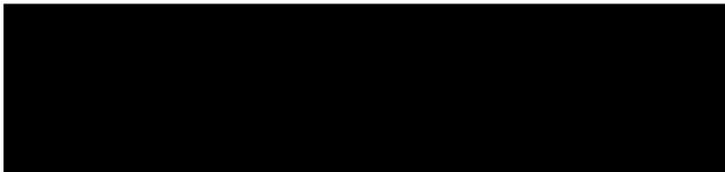
IN RE:

Petitioner:
Beneficiary:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhoads

Chief, Administrative Appeals Office



DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be rejected as untimely filed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a) provides that the affected party must file the complete motion to reopen within 30 days of the decision that the motion seeks to reopen.¹ If the decision was mailed, the motion 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 AAO issued the decision on June 11, 2009. It is noted that the AAO properly gave notice to the petitioner that it had 33 days to file the motion to reopen. Although counsel dated the motion July 8, 2009, it was not received by the AAO until July 29, 2009, 48 days after the decision was issued. Accordingly, the motion was untimely filed. The director forwarded the matter to the AAO.

On motion, counsel stated “please be advised that for some unexplained reason, our package was returned by your office and received today.” However, the AAO notes that the director issued a rejection notice on July 13, 2009 informing counsel that he had not filed the motion on the correct form and that the petition, supporting documents, and money order was being returned to the petitioner. The director explained where counsel could obtain the appropriate form, I-290B.

The regulation at 8 C.F.R. § 103.2 states:

(a) Filing – (1) General. Every application, petition, appeal, motion, request, or other document submitted on any form prescribed by this chapter I, notwithstanding any other regulations to the contrary, must be filed with the location and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter I requiring its submission.

The regulation at 8 C.F.R. § 103.2(a)(7) states:

Receipt date – (i) General. An application or petition received in a USCIS office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 or part 245a of this chapter shall be regarded as

¹ 8 C.F.R. § 103.5(a) further states 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 was beyond the control of the applicant or petitioner.” In the instant case, the AAO does not believe the petitioner’s failure to file its motion to reopen was reasonable or beyond the control of the petitioner. Therefore, the AAO will not excuse the petitioner’s late filing of its motion to reopen. A full explanation of the AAO’s reasoning will be provided.



properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted.

In the instant case, the motion to reopen was not properly filed originally as it was not on the Form I-290B; and therefore, was untimely filed when it was received on the proper form.

As the motion to reopen was untimely filed, the motion must be rejected.

ORDER: The motion to reopen is rejected.

