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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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D9

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

NOV 23 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Petition for a Nonimmigrant Worker under Section 101(a)(15)(P)(i)(a) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(i)(a)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 \$630. 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 Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner filed this nonimmigrant petition seeking an extension of the beneficiary's P-1 status under section 101(a)(15)(P)(i)(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i)(a), as an internationally-recognized athlete. The petitioner is an athlete manager and the beneficiary is a professional runner. The petitioner requested that the beneficiary be granted a two-year extension of status.

The director denied the petition, concluding that the petitioner failed to submit evidence that it was in compliance with the regulatory requirements for petitioners acting as agents, pursuant to 8 C.F.R. § 214.2(p)(2)(iv)(E).

The regulation at 8 C.F.R. § 103.3(a)(2) requires an affected party to file the complete appeal within 30 days after service of the decision, or, in accordance with 8 C.F.R. § 103.5a(b), within 33 days if the decision was served by mail.

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

An application 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 245a of this chapter shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

The record indicates that the director's decision was mailed to the petitioner on February 24, 2010. The AAO notes that, based on the date of service, the petitioner was required to file the appeal on or before Monday, March 29, 2010. The record shows that the Form I-290B, Notice of Appeal or Motion, was initially stamped by the service center as received on that date. However, this filing date was canceled because the petitioner failed to sign the Form I-290B, Notice of Appeal or Motion. The service center rejected and returned the petitioner's appeal on March 30, 2010. The petitioner resubmitted the properly signed Form I-290B on April 13, 2010, and the appeal is considered properly filed as of that date, 48 days after the director's decision was issued.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal.¹ Thus, the appeal was not timely filed and must be rejected on these grounds pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

¹ Compare 8 C.F.R. § 103.5(a)(i) excusing late filed motions to reopen where the delay was reasonable and beyond the control of the applicant or petition. The regulation relating to appeals, 8 C.F.R. § 103.3, does not include any comparable language.

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 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, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case, the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii).

It is noted that the appeal does not meet the applicable requirements of a motion to reopen or reconsider. 8 C.F.R. § 103.5(a). 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 Service 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 petitioner offers no "new" evidence, which could not have been presented in the initial proceeding. Likewise, the petitioner states no reasons for reconsideration, states no reason why it believes the decision was incorrect based on the evidence of record at the time of the director's decision, and fails to cite to any pertinent precedent decisions establishing that the director's decision was based on an incorrect application of law or USCIS policy.

Rather, the petitioner submits evidence that was explicitly requested in a request for evidence ("RFE") issued by the director on January 13, 2010. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, neither the director nor the AAO is required to accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. *Id.*

The untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.