



U.S. Citizenship
and Immigration
Services

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[REDACTED]

File: [REDACTED]
EAC 06 105 50857

Office: TEXAS SERVICE CENTER Date: JAN 11 2008

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

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

IN 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.

Robert P. Wiemann, 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 of 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 record indicates that the director issued the decision on October 17, 2006. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Moreover, the director's notice explicitly states that any appeal must be filed with "this office." (Emphasis in original.) Counsel dated the appeal November 25, 2006 and it was received by the Texas Service Center on Wednesday, November 29, 2006, or 43 days after the decision was issued. Accordingly, the appeal was untimely filed.

On appeal, counsel requests that the appeal be considered timely because the petitioner previously submitted a Form I-290B Notice of Appeal to the AAO, which was received November 7, 2006. The regulation at 8 C.F.R. § 103.3(2)(i) states that an appeal must be filed "*with the office where the unfavorable decision was made* within 30 days after service of the decision." (Emphasis added.) Moreover, as stated above, the director clearly advised the petitioner that any appeal must be filed with that office, the Texas Service Center.

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)(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 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 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 and does not qualify as a motion, the appeal must be rejected.¹

ORDER: The appeal is rejected.

¹ Moreover, counsel merely stated on appeal that he would submit a brief and/or evidence to the Administrative Appeals Office (AAO) within 30 days. As of this date, more than one year later, the AAO has received nothing further. Thus, even if the appeal were timely, it would be summarily dismissed.