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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:

LIN 06 253 52550

Office: NEBRASKA SERVICE CENTER

Date: NOV 23 2009

IN RE:

Petitioner:

Beneficiary:

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)

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

Perry Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied this employment-based immigrant visa petition on February 14, 2008. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on April 16, 2009. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed, the previous decision of the AAO will be affirmed, and the petition will remain denied.

In order to properly file a motion to reopen or a motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the petitioner must file the motion within 30 days of the decision. 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 April 16, 2009. It is noted that the AAO properly gave notice to the petitioner that it had 33 days to file a motion. Although the petitioner dated the motions on March 16, 2009, they were received by the director on May 20, 2009, 34 days after the decision was issued. Accordingly, the motions were untimely filed.

As it relates to motions to reopen, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides 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 this case, the petitioner does not claim and the record does not reflect, that the petitioner's failure to file before the period expired was reasonable and beyond her control.

A motion that does not meet applicable requirements shall be dismissed. *See* 8 C.F.R. § 103.5(a)(4). Here, the untimely motions do not meet the requirements of a motion to reopen or a motion to reconsider.

As the motions were untimely filed, the motions must be dismissed.

ORDER: The motion to reopen and the motion to reconsider are dismissed, the decision of the AAO dated April 16, 2009, is affirmed, and the petition remains denied.