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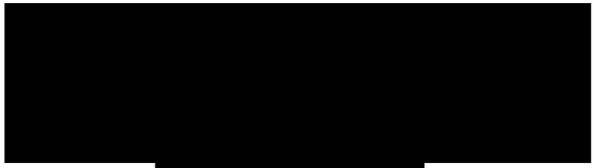
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: SEP 28 2009
EAC 06 013 53001

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal.¹ The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), and 103.5(a)(4).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states in pertinent part that:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except 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.

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) provides:

(iii) Filing Requirements – A motion shall be submitted on Form I-290B, and may be accompanied by a brief. It must be:

- (A) In writing and signed by the affected party or the attorney or representative of record, if any;
- (B) Accompanied by a nonrefundable fee as set forth in § 103.7;
- (C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;
- (D) Addressed to the official having jurisdiction; and;
- (E) Submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

The regulation at 8 C.F.R. § 103.5(a)(1)(i), states that a motion must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. The regulation at 8 C.F.R. § 103.a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. The AAO issued the decision dismissing the petitioner's appeal on October 22, 2008. The record indicates that the petitioner attempted to file the instant motion with an incorrect fee on November 25, 2008, 34 days after the decision of the AAO. However, the motion was not accepted by the service center

¹ The petitioner was initially represented by [REDACTED] On January 9, 2009, the petitioner submitted a letter stating that [REDACTED] is no longer his legal representative in this matter.

because it had not been properly filed with the correct fee.² Motions filed without the proper fee do not retain a filing date. 8 C.F.R. § 103.2(a)(7); *see also* 8 C.F.R. § 103.5(a)(1)(iii)(B). On November 25, 2008, the Nebraska Service Center returned the Form I-290B, Notice of Appeal or Motion, to the petitioner indicating that his motion did not include the correct filing fee. The Nebraska Service Center received the resubmitted Form I-290B with the proper \$585.00 filing fee on December 15, 2008. As the Form I-290B submitted by the petitioner on November 25, 2008 did not retain a filing date, the actual filing date for the Form I-290B is December 15, 2008, 54 days after the decision was served by mail. The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a late motion may be excused in the discretion of United States Citizenship and Immigration Services where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. In this matter, the petitioner's motion was not properly filed within the required thirty days and he has not demonstrated that this delay was reasonable and beyond his control. The motion must therefore be dismissed as untimely filed. Moreover, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C).

The regulation at 8 C.F.R. § 103.5(a)(4) states that “[a] motion that does not meet applicable requirements shall be dismissed.” Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.

² Even if the motion had had been submitted with the proper fee, the motion would have been deemed untimely.