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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 07 005 52784

Office: NEBRASKA SERVICE CENTER

Date:

MAR 16 2010

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:

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 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
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied this employment-based immigrant visa petition on April 17, 2008. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on June 5, 2009. The matter is now before the AAO on a motion to reconsider. The motion 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 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 June 5, 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 motion on July 3, 2009, it was received by the director on July 10, 2009, 35 days after the decision was issued. Accordingly, the motion was untimely filed.

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

As the motion was untimely filed, the motion must be dismissed.

ORDER: The motion to reconsider is dismissed, the decision of the AAO dated June 5, 2009, is affirmed, and the petition remains denied.