

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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**

PUBLIC COPY

B2

FILE: [REDACTED]
SRC 09 194 52575

Office: TEXAS SERVICE CENTER Date:

SEP 13 2010

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:

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 \$585. 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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, on November 4, 2009, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the beneficiary's requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

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 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 regulation at 8 C.F.R. § 1.1(h) explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. 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 Director, Texas Service Center, issued the decision on November 4, 2009. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. The director received the appeal on December 8, 2009, 34 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed it must be rejected.

It is noted that even if we were to accept the petitioner's appeal as timely filed, it would be summarily dismissed. On appeal, counsel states that "[t]he decision has been made based in [sic] an erroneous conclusion of the law and/or fact in the decision being appealed" and a brief would be submitted within 30 days to the AAO. As of this date, approximately nine months later, the AAO has received nothing further. Accordingly, the record is considered complete as it now stands.

As stated under the regulation at 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The petitioner here has not specifically addressed the reasons stated for denial and has not provided any additional evidence. As the petitioner failed to provide any statement or argument regarding the basis of the appeal, it would have otherwise been summarily dismissed.

ORDER: The appeal is rejected.