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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



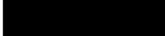
**U.S. Citizenship  
and Immigration  
Services**



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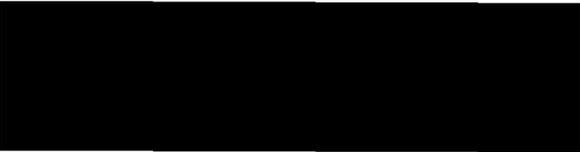
DATE: **MAY 26 2011** OFFICE: TEXAS SERVICE CENTER

FILE: 

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:

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 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 with the office where the unfavorable decision was made 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).

In addition, the regulation at 8 C.F.R. § 103.2(a)(1) provides:

*General.* Every application, petition, appeal, motion, request, or other document submitted on any form prescribed by this chapter [] must be filed with the location and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter I requiring its submission.

The instructions for the Form I-290B, Notice of Appeal or Motion, specifically state: “You must file your appeal or motion with the USCIS [U.S. Citizenship and Immigration Services] office that made the unfavorable decision within 30 calendar days after service of the decision (33 days if your decision was mailed).”

The instructions also specifically state, “Do not send your appeal or motion directly to the Administrative Appeals Office (AAO).”

The record indicates that the Director, Texas Service Center, issued the decision on September 28, 2009. It is noted that the director properly gave notice to the petitioner that he had 33 days to file the appeal and that her appeal “must be filed at the address at the top of this page.” The director also indicated that the “appeal may not be filed directly with the Administrative Appeals Office (emphasis in the original).”

Despite these clear instructions, however, counsel submitted the Form I-290B directly to the AAO on November 2, 2009. On November 3, 2009, the AAO returned Form I-290B with fee to counsel based on his incorrect filing of the appeal with the AAO. Counsel submitted the appeal to the Texas Service Center on November 6, 2009, 39 days after the decision was issued. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) states in pertinent part that “[a]n appeal which is not timely filed within the time allowed must be rejected as improperly filed.” Accordingly, as the appeal was not properly filed within the time allowed, it must be rejected.

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

It is noted that even if the appeal was timely filed, it would be summarily dismissed. On appeal, counsel indicated that he would submit a brief to the AAO within 30 days. Counsel dated the appeal on October 30, 2009. As of this date, approximately 21 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. Although counsel submitted additional documentary evidence on appeal, he failed to identify to which criteria, if any, the documentation pertains pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Counsel here has not specifically addressed the reasons stated for denial and has provided no statement or argument to give the AAO any meaningful guidance regarding which of the director's findings are in contention. As counsel failed to provide any statement or argument regarding the basis of his appeal, were the appeal not being rejected as untimely, it would have otherwise been summarily dismissed.

**ORDER:** The appeal is rejected.