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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**

B2

[REDACTED]

DATE: **OCT 21 2011**

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

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. The AAO will return the matter to the director for consideration as a motion to reopen and reconsider.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must file the complete appeal within 30 days of 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 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 issued the decision on March 8, 2010. The regulation at 8 C.F.R. § 204.5(n)(2) requires that “[t]he petitioner shall be informed in plain language of the reasons for denial *and of his or her right to appeal* [emphasis added].” Moreover, the regulation at 8 C.F.R. 103.3(a)(1)(iii)(A) requires that “[w]hen an unfavorable decision may be appealed, the official making the decision shall state the appellate jurisdiction and shall furnish the appropriate appeal form.” Finally, the regulation at 8 C.F.R. § 103.3(a)(2)(i) requires that “[t]he affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made.” However, the director did not inform the petitioner of his appeal rights and that the appeal must be filed with the office where the unfavorable decision was made (Texas Service Center).

On April 7, 2010, counsel incorrectly submitted the appeal to the AAO. On April 8, 2010, the AAO returned the appeal to counsel and instructed her to file the appeal with the Texas Service Center. On April 16, 2010, or 39 days after the decision was issued, the appeal was received by the Texas Service Center. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. Here, as the director failed to inform the petitioner of his appeal rights, including where to file the appeal, the matter will be returned to the director for consideration as a motion. If the director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.