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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**

B3

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **FEB 08 2011**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to  
Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:

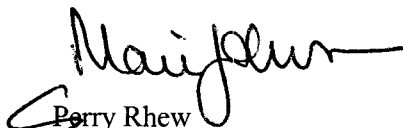
[REDACTED]

**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 \$630. 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 Administrative Appeals Office (AAO) rejected a subsequent appeal as untimely. The matter is now before the AAO on motion. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner is a community development organization. It seeks to classify the beneficiary as an outstanding professor or researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a professor. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher and that the petitioner was a qualifying private employer.

The AAO rejected the subsequent appeal as untimely filed. On motion, counsel asserts that the AAO used the incorrect receipt date and that the appeal was actually timely. Counsel submits a postal receipt. For the reasons discussed below, the postal receipt does not reflect the date when the appeal was properly filed with the proper fee. Thus, we reaffirm our previous decision rejecting the appeal 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 within 30 days of 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 affected party filing the appeal must pay the required fee. 8 C.F.R. § 103.3(2)(i). An application or petition is properly filed “if it is signed and executed and *the required filing fee is attached*. *See* 8 C.F.R. § 103.2(a)(7)(i). An application or petition that “is submitted with the wrong filing fee shall be rejected as improperly filed.” *Id.* Rejected applications and petitions “will not retain a filing date.” *Id.*

The instructions for the Form I-290B state:

An appeal or motion that is not signed or is not accompanied by the proper fee will be dismissed or rejected with a notice that the appeal is deficient. If completed timely, you may correct the deficiency and resubmit the appeal. However, an appeal or motion is not considered properly filed until it is accepted by USCIS.

The instructions for an appeal are incorporated into the particular section of the regulations requiring its submission. 8 C.F.R. § 103.2(a)(1).

The record indicates that the director issued the decision on May 8, 2009. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal and listed the proper fee for an appeal. Counsel dated the appeal June 10, 2009, and, as noted by counsel on appeal, the director received the appeal on June 11, 2009. On June 15, 2009, however, the director returned the appeal because the petitioner did not include the proper fee. As stated by the AAO, the director received the appeal with the proper fee on June 23, 2009, 46 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. 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and, when filed, be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements when filed shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal did not meet the requirements of a motion to reopen or a motion to reconsider when it was filed. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal was properly rejected. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

**ORDER:** The AAO's decision of February 23, 2010 is affirmed. The petition is denied.