



U.S. Citizenship  
and Immigration  
Services

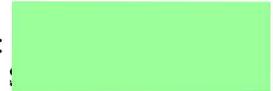
(b)(6)



DATE: SEP 05 2013

Office: TEXAS SERVICE CENTER

FILE:



IN RE:

Petitioner:



Beneficiary:



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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is self-described as company providing carpet and flooring installation. It seeks to classify the beneficiary as an outstanding researcher or professor 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 an installer. The director denied the petition on the following grounds: (1) the petitioner had not established that the beneficiary is recognized as outstanding in a specific academic area; (2) no evidence was submitted to establish that the beneficiary has the requisite experience in teaching or research in an academic area; (3) no evidence was submitted showing the beneficiary has a valid job offer; and (4) no evidence was submitted that the petitioner can pay the proffered wage of \$25.00 per hour.

On appeal, the petitioner submits a letter from the petitioner's manager. No other evidence was submitted in support of the appeal.

We note that the appeal of the director's decision was filed by the beneficiary.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states:

- (B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Similarly, only an authorized party may maintain an appeal. 8 C.F.R. § 103.3(a)(2)(v) states:

- Improperly filed appeal—(A).* *Appeal filed by person or entity not entitled to file it-- (1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

Inasmuch as the beneficiary does not have standing to file an appeal in this matter, the appeal must be rejected as improperly filed, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A).

In addition, 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 submit 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. § 103.8(b). The regulation at 8 C.F.R. § 1.2 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 submission, but the date of actual receipt with the proper signature and the required fee. See 8 C.F.R. § 103.2(a)(7)(i). The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) provides that an appeal which is not filed within the time allowed must be rejected as improperly filed.

The record indicates that the service center director issued the decision on February 26, 2013. It is noted that the service center director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit. *See Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006).

The petitioner attempted to file the appeal on March 20, 2013, and April 24, 2013, but the appeal was not accepted by the Director, Phoenix Field Office, because the petitioner's submission did not include the correct filing fee. *See* 8 C.F.R. § 103.3(a)(2)(i). Appeals that are submitted with the wrong fee do not retain a filing date. *See* 8 C.F.R. § 103.2(a)(7)(i).

Although the petitioner dated the Form I-290B March 14, 2013, the complete appeal with the correct fee was not received by the service center until May 7, 2013, or 70 days after the decision was issued. Accordingly, the appeal must be rejected as untimely filed. This is an additional basis to reject the 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 as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case, the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii).

It is noted that the appeal does not meet the applicable requirements of a motion to reopen or reconsider. 8 C.F.R. § 103.5(a). A motion to reopen must state the new facts to be proved in the reopened proceeding and 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 shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On appeal, the petitioner submits a letter from [REDACTED], the petitioner's manager, addressed to the service center director. In the letter, [REDACTED] states that she is offering the beneficiary a position to work as an installer and that she will pay him the proffered wage of \$25.00 per hour. No other evidence was submitted in support of the appeal. Here, the petitioner offers no "new" evidence, which could not have been presented in the initial proceeding. Likewise, the petitioner fails to cite to any pertinent precedent decisions establishing that the director's decision was based on an incorrect application of law or USCIS policy. On the Form I-290B the petitioner has not specifically addressed the reasons stated for denial. The petitioner has not even expressed disagreement with the director's decision.

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

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*NON-PRECEDENT DECISION*

Page 4

As the appeal was untimely filed, and was filed by an improper party, the appeal must be rejected.

**ORDER:** The appeal is rejected.