

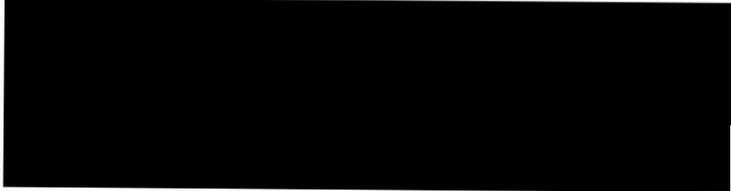
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U.S. Citizenship
and Immigration
Services

B4



File: [Redacted]
SRC 04 111 51377

Office: TEXAS SERVICE CENTER

Date: NOV 01 2007

IN RE: Petitioner:
Beneficiary:



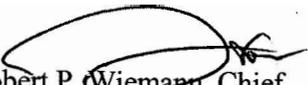
Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. An appeal was subsequently submitted with the Administrative Appeals Office (AAO). The appeal was rejected as improperly filed pursuant to the regulations at 8 C.F.R. § 103.3(a)(2)(v)(A). The petitioner subsequently filed a motion to reconsider the AAO's decision. Instead of forwarding the motion to the AAO as required by 8 C.F.R. § 103.3(a)(2)(iv), the director determined that the motion was untimely filed and rejected it. The matter is now before the AAO on motion to reopen. The motion to reopen will be granted and the director's prior decision on the motion to reconsider is hereby withdrawn, as jurisdiction to make any determination on the petitioner's prior motion lies with the AAO. *See id.* However, the director properly deemed the petitioner's motion as untimely. As such, the petitioner's prior motion to reconsider is hereby dismissed and the AAO hereby affirms its decision to reject the previously filed appeal based on its improper filing.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a Citizenship and Immigration Services (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the AAO issued its initial decision rejecting the appeal for improper filing on March 21, 2006. Although counsel attempted to file a motion to reconsider with regard to the AAO's decision of April 24, 2006, the motion was not accompanied by the correct filing fee. The motion with the correct filing fee was not received by CIS until May 9, 2006, or 49 days after the decision was issued. Therefore, the motion was untimely filed. There is no statute or regulation authorizing the AAO to ignore or excuse the time restriction specified in 8 C.F.R. § 103.5(a)(1) with regard to a motion to reconsider.

Next, with regard to the petitioner's most recent motion to reopen the jurisdictionally improper decision rejecting the prior untimely filed motion, counsel asserts that he was temporarily unavailable during the time the motion to reconsider was filed and claims that the individual who acted on behalf of the petitioner was to blame for filing the motion with the incorrect fee. However, as previously stated, the AAO does not have the discretionary authority either to disregard or to extend the filing deadline with regard to a motion to reconsider. Merely explaining that the error was that of the petitioner's representative does not overcome the required action of dismissing the motion. The motion was untimely filed and is hereby dismissed. *See* 8 C.F.R. §§ 103.5(a)(1)(i) and 103.5(a)(4).

ORDER: The petitioner's initial motion is dismissed. The underlying decision rejecting the petitioner's appeal is affirmed.