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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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File:



Office: NEBRASKA SERVICE CENTER

Date: APR 03 2009

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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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, revoked approval of the preference immigrant visa petition. The matter is currently before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

Pursuant to the regulation at 8 C.F.R. § 205.2(d), a petitioner must file an appeal from a decision revoking approval of a petition within 15 days after the service of the notice of the revocation. Petitioners that are served with the notice by mail will be allowed 18 days.

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a U.S. Citizenship and Immigration Services (USCIS) 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 appeal 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 director issued the decision on March 31, 2008. The appeal was received by USCIS on May 1, 2008, or 31 days after the decision was issued. Therefore, the appeal was untimely filed. While the AAO acknowledges that the director improperly gave notice to the petitioner that it had 30 days to file the appeal, the regulations, not the director, govern the requirements for filing an appeal. The AAO does not have the discretionary authority to consider an appeal that has not been timely filed. Neither the Act nor the pertinent regulations grant the AAO authority to extend the 15-day time limit for filing an appeal of a revoked immigrant petition. *See Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006). As the petitioner in the instant matter failed to comply with the time restriction specifically cited in 8 C.F.R. § 205.2(d), the appeal cannot be deemed timely 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.

Accordingly, the AAO will consider the petitioner's submissions in light of 8 C.F.R. § 103.5(a)(2), which states, in pertinent part, that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

In the present matter, counsel's brief primarily disputes the various points and observations made in the director's decision. However, counsel's arguments on appeal cannot be deemed as "new" facts as defined above. Therefore, the petitioner does not meet the requirements of a motion to reopen.

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

Additionally, the regulations at 8 C.F.R. § 103.5(a)(3) state, in pertinent part:

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 [USCIS] 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.

In the instant case, counsel does not cite any legal precedent that would indicate a legal or policy error on the part of the director in revoking the petitioner's immigrant petition. Therefore, the petitioner also does not meet the requirements for a motion to reconsider.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) states that an appeal which is not filed within the time allowed must be rejected as improperly filed. Accordingly, the appeal in the instant case will be rejected as untimely filed.

ORDER: The appeal is rejected as untimely filed.