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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  
Services**

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FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER Date: FEB 01 2010  
LIN 07 126 51194

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

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)

ON 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center. The petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO). On December 2, 2008, the appeal was dismissed. The matter is currently before the AAO on a second appeal. The appeal will be rejected.

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 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, which shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. *See* 8 C.F.R. § 103.2(a)(7)(i). 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 AAO issued a decision dismissing the previously filed appeal on December 2, 2008. The record also shows that the petitioner attempted to file a second appeal on or about January 2, 2009. However, the petitioner did not follow the instructions that are provided on the cover page of the AAO's decision, where the petitioner was expressly informed that a motion filed on a Form I-290B must be submitted to the office that originally decided the petitioner's case. In the present matter, the record shows that the Nebraska Service Center issued the initial decision regarding the petitioner's case. As such, any motion to reopen or motion to reconsider the AAO's December 2, 2008 decision, would have to be filed with the Nebraska Service Center. Accordingly, the AAO properly returned the petitioner's Form I-290B along with a notice dated January 5, 2009, informing the petitioner that the I-290B was being returned because it was not filed with the Nebraska Service Center.

In response, counsel for the petitioner submitted a letter dated January 9, 2009, acknowledging that a clerical error was the cause for the improper filing. The petitioner subsequently resubmitted the appeal, which was received on January 12, 2009, or 41 days after the AAO issued its original decision dismissing the appeal. Accordingly, the appeal was untimely filed.

The AAO notes that, while the petitioner had previously filed an appeal, whose merits had been addressed in a full decision that was issued on December 2, 2008, the box marked in the petitioner's most recently filed Form I-290B indicates that the petitioner clearly intended to file a second appeal with the AAO. 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 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).

Here, counsel merely submits general statements indicating that he disagrees with the AAO's findings. Therefore, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. As such, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

Additionally, the AAO notes that there is no statutory or regulatory provision that permits the petitioner to file more than one appeal with regard to the same petition. *See* 8 C.F.R. § 103.3(a)(1)(ii). Although 8 C.F.R. § 103.5(a) permits the petitioner to file a motion to reopen or reconsider the AAO's decision on appeal, the Form I-290B in the present matter clearly indicates that the petitioner intended to file an appeal rather than a motion, apparently seeking to appeal the AAO's decision dismissing the appeal that was filed earlier in this proceeding.

As there is no law or regulation permitting the filing of multiple appeals of the same petition, the petitioner's second appeal must be rejected.

**ORDER:** The appeal is rejected.