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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



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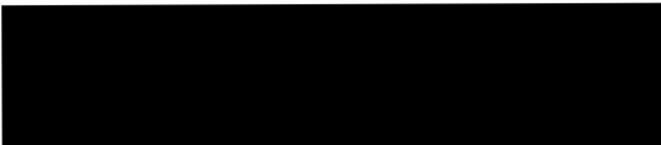
FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: SRC 05 148 51104

JAN 21 2010

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.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the immigrant visa petition. On February 27, 2007, a motion to reopen the matter was filed with the director. On April 23, 2007, the director dismissed the motion to reopen as untimely. On May 23, 2007, another motion to reopen was filed with the director. On July 30, 2007, the director granted the motion, reopened the matter, and requested additional evidence. On September 11, 2007, additional evidence was submitted and, on October 23, 2007, the director denied the petition. Although the petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO), on October 2, 2008, the appeal was rejected as improperly filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I). The matter is currently before the AAO on appeal, which will also be rejected 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 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 rejecting the previously filed appeal on October 2, 2008. The record also shows that the petitioner attempted to file the appeal on December 5, 2008, or 64 days after the AAO issued its decision. However, the service center returned the appeal to the petitioner with a note indicating that the petitioner failed to use the revised Form I-290B version. (Rev. 03/04/08). The petitioner subsequently used the correct version of the Form I-290B, which was received by the service center on December 29, 2008, or 88 days after the decision was issued. Accordingly, the appeal was untimely filed. The AAO notes that even if the petitioner had used the appropriate form, the appeal would have been late.

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, 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).

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 rejecting the appeal filed earlier in this proceeding.

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

**ORDER:** The appeal is rejected.