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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

**PUBLIC COPY**

[Redacted]

B4

FILE: [Redacted]

Office: [Redacted]

Date:

JAN 06 2011

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)

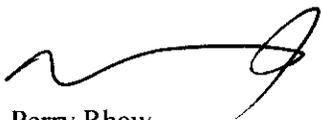
ON BEHALF OF PETITIONER:

[Redacted]

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.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, [REDACTED] denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will 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 director issued the decision on May 21, 2007. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. It appears that the petitioner made an initial attempt to file the appeal on June 26, 2007. It is noted that even if June 26, 2007 were deemed the filing date of the appeal, it would have been deemed untimely as it was filed 36 days after the denial was issued. The record shows that U.S. Citizenship and Immigration Services ultimately received the appeal with the correct filing fee on March 25, 2008, which is approximately ten months after the denial had been issued. Accordingly, the appeal was untimely filed.

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).

Furthermore, a review of the record shows that even if the appeal had been timely filed, it would have been dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v), which states that any appeal that fails to identify specifically any erroneous conclusion of law or statement of fact shall be summarily dismissed. Here, the only statements made on appeal consisted of three assertions that represented the petitioner's disagreement with the director's findings. None of the three statements indicated that the director made erroneous legal conclusions or that he somehow misstated the facts.

Regardless, as the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

**ORDER:** The appeal is rejected.