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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave. N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



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DATE: JUL 06 2011

OFFICE: NEBRASKA SERVICE CENTER

FILE: 

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the immigrant visa petition. The petitioner subsequently filed an appeal, which was dismissed by the Administrative Appeals Office (AAO) in a decision dated December 2, 2008. The matter is now before the AAO on a second appeal. The appeal will be rejected based on its improper and untimely filing.

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 dismissing the previously filed appeal on December 2, 2008. The record also shows that the petitioner attempted to file an appeal to that decision on or about January 2, 2009.<sup>1</sup> However, as the petitioner erroneously submitted the appeal directly to the AAO, it was returned to the petitioner with a notice reminding the petitioner that any subsequent submissions must be filed with the U.S. Citizenship and Immigration Services (USCIS) office where the petitioner was originally filed. Here, the petition was filed and a decision was subsequently issued by the Nebraska Service Center. Accordingly, the petitioner filed the appeal at the proper office where the appeal was received on January 12, 2009, or 41 days after the AAO issued its decision.

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

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<sup>1</sup> *See* FedEx receipt showing a delivery date of January 2, 2009.

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 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.