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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



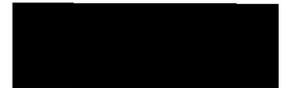
**U.S. Citizenship  
and Immigration  
Services**



B4.

DATE: **MAR 19 2012**

OFFICE: TEXAS SERVICE CENTER



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:**

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 preference visa petition was denied by the Director, Texas Service Center. The petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO) to review the director's decision. The director determined that the appeal was untimely filed and rejected it. The matter is now before the AAO on appeal.<sup>1</sup> The appeal will be rejected as untimely and improperly filed.

Upon review, it is determined that the director lacked jurisdiction to take action on an appeal that was filed with the AAO. Regardless of whether or not the director made a proper determination as to the timely filing of an appeal, the fact remains that the director lacks jurisdiction over an appellate matter and his decision to reject the petitioner's appeal based on its untimely filing must therefore be withdrawn.

Notwithstanding the AAO's withdrawal of the director's decision concerning the Form I-290B with receipt number [REDACTED] the appeal was untimely filed and must be rejected pursuant to relevant regulations.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record 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. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the service center director issued the decision on February 5, 2010. It is noted that the service center director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

Although counsel dated the Form I-290B March 8, 2010, it was not received by the service center until March 16, 2010, or 39 days after the decision was issued. Accordingly, the appeal was untimely 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. The record shows that the official having jurisdiction over the motion, i.e., the director, considered the matter and determined that the petitioner did not meet the regulatory motion requirements. *See* 8 C.F.R. § 103.5(a)(1)(ii).

Additionally, the record shows that this was the second appeal filed to address the director's February 5, 2010 decision.<sup>2</sup> There is no statute or regulation that permits the petitioner to file more than one appeal addressing a single adverse decision. Therefore, the AAO finds that in addition to

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<sup>1</sup> The record shows that the petitioner filed two separate Form I-290Bs. The initially filed Form I-290B shows a receipt date of March 10, 2010 with receipt number [REDACTED] and the instant Form I-290B shows a receipt date of March 16, 2010 with receipt number [REDACTED]

<sup>2</sup> See FN 1.

Page 3

its untimely filing, the instant appeal was also not permissible and therefore is deemed as improperly filed.

As the appeal was untimely and improperly filed, the appeal must be rejected.

**ORDER:** The appeal is rejected.