



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: Office: TEXAS SERVICE CENTER

JUN 24 2013

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:

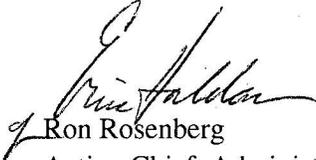
SELF-REPRESENTED

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 in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner is a Texas corporation. It seeks to employ the beneficiary as the import/export manager of its manufacturing business. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition after concluding that the petitioner failed to establish: (1) that the petitioner has a qualifying relationship with the beneficiary's last foreign employer; (2) that the beneficiary's proposed employment with the United States petitioning company will be in a qualifying managerial or executive capacity; (3) that the petitioner had been doing business for at least one year as of the date of filing; and (4) that the foreign entity is engaging in the regular, systematic, and continuous provision of goods and services.

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. 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the actual date of receipt at the designated filing location. 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 its receipt was recorded by USCIS.

The record indicates that the service center director issued the decision on September 28, 2012. 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.

The designated filing location did not receive the Form I-290B, Notice of Appeal or Motion, until November 9, 2012, or 41 days after the decision was 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.

On appeal, the petitioner claims that it did not receive the notice of denial until October 29, 2012 after calling to inform the immigration office that neither the petitioner nor the attorney of record had received a copy of the denial notice. However, an uncorroborated, self-serving denial of receipt is weak evidence, even if sworn. *Joshi v. Ashcroft*, 389 F.3d 732, 735-736 (7th Cir. 2004). Absent independent and objective evidence to support the petitioner's claim that it did not receive a copy of the director's denial, the AAO finds that the director's decision was properly issued by routine service. 8 C.F.R. § 103.8(a)(1)(i).

The record does not contain a letter or other correspondence advising USCIS that the petitioner's mailing address changed from the address listed on the Form I-140. Additionally, the director's request for evidence ("RFE") contained a coversheet containing the following instructions: "If you have moved, write your current address in the blank area below." The response was submitted with the coversheet as directed, however, no new address was provided. Further, the response to the RFE indicates that the attorney of record received correspondence from USCIS at the address provided on the Form G-28, Notice of Entry of Appearance as Attorney or

Representative, and the petitioner has not indicated that counsel's mailing address has changed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998). The notice of denial indicates that it was mailed to both the petitioner and to the attorney of record.

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 official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director of the Texas Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the appeal as a motion and forwarded the matter to the AAO.

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

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is rejected.