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

(b)(6)

U.S. Citizenship and Immigration Services

Date: FEB 18 2014

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)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The petitioner subsequently appealed the decision to the Administrative Appeals Office (AAO) and the AAO dismissed the appeal. The matter is now again before the AAO on a motion to reconsider. The motion will be dismissed as untimely filed.

The petitioner is a New York corporation engaged in the import and wholesale distribution of clothing. The petitioner states that it is a subsidiary of [redacted] located in China. The petitioner seeks to employ the beneficiary as its general manager. 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, finding that the petitioner had failed to establish: (1) that the beneficiary will be employed in an executive or managerial capacity in the United States; and (2) that the beneficiary was employed abroad in a managerial or executive capacity for at least one of the three years preceding the his entry into the United States as an L-1A nonimmigrant intracompany transferee. The AAO affirmed the director's adverse findings and dismissed the appeal on November 7, 2013.

The petitioner now files a motion to reconsider claiming that the petitioner's business was impacted by Hurricane Sandy while the petition was pending, thus causing a temporary decrease in staffing and a temporary need for the beneficiary to become more involved in the day-to-day activities of the company. Counsel asserts that the evidence of record nevertheless establishes that the petitioner was employed abroad and would be employed in the United States in a qualifying managerial or executive capacity. However, the record shows that the instant motion was untimely filed and therefore must be dismissed on that basis.

The regulation at 8 C.F.R. § 103.5(a)(1) states the following in pertinent part:

> (i) Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

Therefore, in order to properly file a motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the petitioner or the attorney or representative of record must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. 8 C.F.R. § 103.5a(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).

The record indicates that the AAO dismissed the appeal of the director's decision on November 7, 2013. It is noted that the AAO properly gave notice to the petitioner that it had 33 days to file a motion to reconsider or reopen. Any motion to reopen or reconsider was due by Tuesday, December 10, 2013.

Although the Form I-290B, Notice of Appeal or Motion, is dated December 6, 2013, it was not received by the designated filing location until December 13, 2013 or 36 days after the AAO's decision was issued. Indeed, the record reflects that the Form I-290B was mailed on December 10, 2013. Accordingly, the motion was untimely filed. Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

Although the regulation at 8 C.F.R. § 103.5(a)(1)(i) indicates that an untimely filed motion to reopen may be excused if the delay was reasonable and beyond the control of the petitioner, the same provisions do not apply to a motion to reconsider. Furthermore, there is no indication in the instant record that the untimeliness of the motion was the result of circumstances that were beyond the petitioner's control. Therefore, the motion must be dismissed due to its untimely filing.

As a final note, 8 C.F.R. § 103.5(a)(1)(iv) provides that the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date.

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

ORDER: The motion is dismissed.