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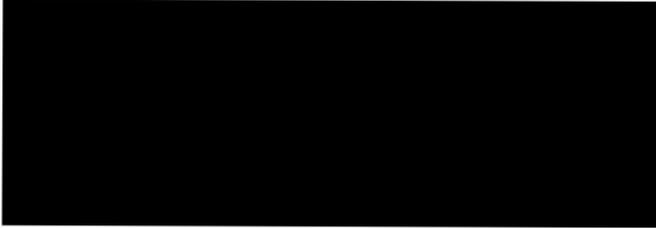
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
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FILE: LIN 07 005 52270 Office: NEBRASKA SERVICE CENTER Date: **FEB 10 2009**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, 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 U.S. Citizenship and Immigration Services (USCIS) 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). Service is defined as the mailing of a notice, not the petitioner's receipt of that notice. *See* 8 C.F.R. § 103.5a(a)(1). 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 director issued the decision on April 16, 2008. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Counsel dated the Form I-290B Notice of Appeal June 13, 2008, and the director received the form on June 17, 2008, 62 days after the decision was issued. Accordingly, the appeal was untimely filed.

In a statement accompanying the appeal, counsel states that the denial notice "was dated April 16, 2008, and had a supplemental time stamp at the bottom of May 12, 2008, as it appears it was mailed to an incorrect address the first time. The letter itself was not received in our office until May 27, 2008."

The record contains no evidence that the petitioner or counsel had notified the director of any change of address prior to the initial issuance of the decision in April 2008. The denial notice was addressed to counsel at the post office box address shown on correspondence received prior to the denial date.

Counsel does not submit a copy of the denial notice with the "supplemental time stamp," but USCIS records show that a change of address was recorded on May 16, 2008. Assuming that the director did reissue the notice on May 12, 2008, a timely appeal would have been due no later than Monday, June 15, 2008. Thus, the appeal was still filed untimely even under this modified time table.

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. The appeal contains no substantive discussion of the grounds of denial and no new evidence. Counsel states that he will submit a brief within 30 days, but to date, more than seven months later, the record contains no further submission from either the petitioner or counsel. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2). Even if the appeal had been timely filed, it would have been summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v), which states, in pertinent part, “[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.”

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

ORDER: The appeal is rejected.