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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE:

EAC 00 099 50047

Office: TEXAS SERVICE CENTER

Date: SEP 02 2009

IN RE:

Petitioner:

Beneficiary:

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the employment-based immigrant visa petition. Subsequently, the director determined that disqualifying circumstances had arisen. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO then reopened the petition on the petitioner's motion, and affirmed the denial of the petition. The AAO then dismissed a second motion by the petitioner as untimely. The petitioner has now filed a third motion to reopen and reconsider. The AAO will grant the motion and affirm its earlier decision.

The AAO's previous decision, issued March 12, 2009, contained the following language:

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. 8 C.F.R. § 103.5(a)(1)(i). 8 C.F.R. § 103.5a(b) allows an additional three days for service by mail.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The AAO issued its prior decision on October 9, 2007. The instructions to Form I-290B, Notice of Appeal or Motion, advise: "Do **not** send your appeal directly to the Administrative Appeals Office" (emphasis in original). The petitioner nevertheless sent the Form I-290B directly to the AAO, which received the motion on November 9, 2007. The AAO returned the improperly filed motion. The Vermont Service Center received the motion on November 20, 2007, 42 days after the AAO issued its decision. Therefore, the decision was untimely filed. The petitioner having been instructed not to file the form directly with the AAO, the delay arising from the petitioner's failure to follow those instructions was neither reasonable nor beyond the petitioner's control.

The motion was not properly filed and therefore, pursuant to 8 C.F.R. § 103.5(a)(4), must be dismissed.

In his latest motion, the petitioner states that the instructions to Form I-290B, Notice of Appeal or Motion, state "Do not send your appeal directly to the AAO." The petitioner observes that there is no comparable instruction for motions. Therefore, the petitioner claims that the "AAO erred in characterizing [the] motion as an appeal." The petitioner incorrectly assumes that the instructions deliberately omitted reference to motions in the quoted passage, and that the AAO accepts direct filings of motions.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E) requires that a motion must be submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction. The AAO, in this instance, is the office having jurisdiction rather than the office maintaining the record. The AAO does not maintain records of proceeding; rather, it has only temporary possession of such records while they are on appeal, motion, or certification.

The regulation is binding on USCIS employees in their administration of the Act, and USCIS employees do not have the authority to disregard USCIS regulations. *See, e.g., Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission*, 613 F.2d 1120 (C.A.D.C., 1979) (an agency is bound by its own regulations); *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, (C.A.D.C., 1986) (an agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned).

The petitioner has not shown that the AAO erred in dismissing the petitioner's November 20, 2007 motion. Therefore, we affirm the previous decision.

We note that the petitioner filed another petition (receipt number ERC 08 155 52115) on his behalf on April 14, 2008. The Director, Texas Service Center, denied that petition on June 11, 2008, but the AAO sustained the petitioner's appeal and approved the petition on March 12, 2009. Both petitions are within the same alien file (), and the AAO does not adjudicate Form I-485 adjustment petitions. Pending appeals and motions reside with the AAO. Therefore, USCIS Service Centers can take no further action on any adjustment application or other proceeding arising from the approved petition so long as the file remains with the AAO. The petitioner is advised that any further motions (or other attempts to prolong the present proceeding) will, necessarily, make his alien file unavailable for any further action on his approved petition while such motions or other actions are pending.

The AAO will transmit the record of proceeding to the Texas Service Center, where the petitioner filed his now-approved petition.

ORDER: The AAO's decision of March 12, 2009 is affirmed. The dismissal of the appeal shall not be disturbed.