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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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[REDACTED]

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FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

NOV 15 2010

IN RE:

Petitioner:

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.

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 employment-based immigrant visa petition was denied by the Director, Texas Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The regulation at 8 C.F.R. § 103.2(a)(1) provides:

General. Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.

Further, the regulation at 8 C.F.R. § 103.2(a)(7)(i) states, in pertinent part:

An application or petition received in a USCIS office shall be stamped to show the time and date of actual receipt . . . and shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached.

Finally, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides, in part, that the affected party must file the complete appeal “with the office where the unfavorable decision was made within 30 days after service of the decision.” If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

Part 1 of the instructions for the Form I-290B, Notice of Appeal to the AAO, filed by the petitioner states: “You must file your appeal with the U.S. Citizenship and Immigration Services (USCIS) office that made the unfavorable decision within 30 calendar days after service of the decision (33 days if your decision was mailed).”

The record indicates that the Director, Texas Service Center, issued the decision on May 25, 2010. It is noted that the director clearly and properly gave notice to the petitioner that the appeal “must be filed with this office at the address at the top of this page within 30 days of the date of this notice (33 days if this notice was mailed to you).” The Form I-290B was received by the director on June 30, 2010, 36 days after the date on the decision.

The regulations require that an appeal which is not timely filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1). As the appeal was not filed with the Texas Service Center within the time allowed, it will be rejected as untimely.

The burden of proof in visa petition proceedings 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 appeal is rejected.