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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



**U.S. Citizenship
and Immigration
Services**



B5

DATE: **FEB 15 2012**

OFFICE: TEXAS SERVICE CENTER



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:

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner filed a motion to reopen the proceeding, and the director dismissed the motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as untimely filed and return the matter to the director for consideration as a motion to reopen and reconsider.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) requires 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 petitioner must file the appeal within 33 days. *See* 8 C.F.R. § 103.5a(b). 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 service center director issued the decision on January 11, 2011. 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 petitioner signed and mailed the Form I-290B Notice of Appeal on February 10, 2011. On that form, the petitioner claimed an address in Rockville, Maryland. The mailing envelope, however, shows a return address [REDACTED] with a Royal Mail postmark and postage paid in British pounds. The service center did not receive the appeal until February 28, 2011, or 48 days after the director issued the decision. Accordingly, the appeal was untimely filed.

The petitioner filed the appeal with an incorrect fee, the director having misstated the fee amount on the January 11, 2011 dismissal notice. The service center received the correct fee on March 11, 2011. Even if the initial fee had been correct, the appeal was untimely.

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 erroneously marked the appeal as timely filed and forwarded the matter to the AAO. The AAO will therefore return the matter to the director. If the director determines that the late appeal meets the requirements of a motion, the director shall grant the motion and issue a new decision.

Because the appeal was untimely filed, the AAO must reject the appeal.

ORDER: The appeal is rejected.