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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

[redacted]

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 2 5 2009
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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 preference visa petition was denied by the Director, Nebraska Service Center. The case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1). The AAO will return the matter to the director for consideration as a motion to reopen.

The petitioner is a software development/consulting firm. It seeks to employ the beneficiary permanently in the United States as a senior programmer/analyst.

The record indicates that the director denied the I-140, Immigrant Petition for Alien Worker on January 28, 2008. The petitioner submitted a properly filed Notice of Appeal or Motion (Form I-290B) on March 11, 2008. The record indicates that it had previously been rejected by the service center on February 28, 2008 because it had not been properly signed.

The regulation at 8 C.F.R. § 103.3(a)(2) requires an affected party to file the complete appeal within 30 days after service of the decision, or, in accordance with 8 C.F.R. § 103.5a(b), within 33 days if the decision was served by mail. Although the petitioner initially submitted the notice of appeal within 33 days of service of the decision, this submission was not properly signed and did not retain a filing date. The properly filed appeal was not submitted until March 11, 2008, or eight days after the deadline for appealing the director's decision, which was March 3, 2008. Therefore, the United States Citizenship and Immigration Services (USCIS) is required to reject the appeal as untimely filed.

USCIS, which includes both the Nebraska Service Center and the AAO, has no authority to accept an untimely appeal that fails to hold a timely filing date due to the submission of an unsigned appeal. USCIS is compelled to reject such an appeal. Title 8 C.F.R. § 103.3(a)(2)(v)(B)(1) states in pertinent part that "[a]n appeal which is not timely filed within the time allowed must be rejected as improperly filed." Therefore, under the regulations, USCIS lacks the authority to consider the untimely appeal. An untimely appeal shall be rejected as improperly filed. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

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 as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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 U.S. Citizenship and Immigration Services (USCIS) 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). The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(l)(ii).

The petitioner's appeal is rejected as untimely filed. As the petitioner submitted a new evaluation related to the basis for the petition's denial, the case will be returned to the director to treat as a motion to reopen.

ORDER: The appeal is rejected as untimely filed. The case will be returned to the director to treat as a motion to reopen.