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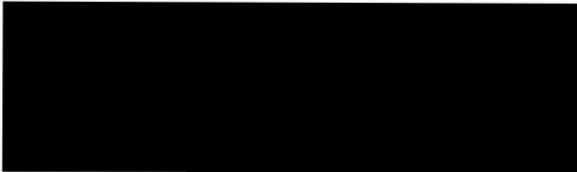
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

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U.S. Citizenship  
and Immigration  
Services

B6



File:

SRC 07 038 52360

Office: TEXAS SERVICE CENTER

Date: MAY 07 2009

In re:

Petitioner:

Beneficiary:

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)

IN 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, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner<sup>1</sup> seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. The director determined that the petitioner failed to establish its continuing ability to pay the proffered wage and denied the petition accordingly.

The regulation at 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii) states that an affected party may make a written request to the AAO for additional time to submit a brief and that, if the AAO grants the affected party additional time, it may submit the brief directly to the AAO. On appeal, counsel indicated that she would submit a brief and/or evidence to the AAO within 30 days and stated the following: "Brief will follow in thirty days. The Service was incorrect in applying the law and made mistakes with many of the facts. Details to follow in brief."

Counsel dated the appeal July 16, 2007. As of this date, more than 21 months later, the AAO has received nothing further.

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Counsel here has not specifically identified any erroneous conclusion of law or statement of fact for the appeal and has not provided any additional evidence. The appeal must therefore be summarily dismissed.<sup>2</sup>

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<sup>1</sup> The petitioner's corporate status was cancelled on December 31, 2007 by the Virginia State Corporation Commission. See <http://s0302.vita.virginia.gov/servlet/resqportal/resqportal> (accessed April 20, 2009).

<sup>2</sup> The appeal may alternatively be rejected as untimely filed. In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days 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). 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 June 20, 2007. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal with the Texas Service Center. Although counsel dated the appeal June 20, 2007, it was filed at a local United States Citizenship and Immigration Services (USCIS) office in Virginia on July 17, 2007, and it was received by the Texas Service Center on July 25, 2007, 35 days after the decision was issued. Accordingly, the appeal was untimely filed. 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.

The AAO also notes that the Form I-290B included the incorrect filing fee of \$110.00. A new filing fee of \$385.00 became effective on September 28, 2005. The filing fee was further adjusted to \$585.00 on July 30, 2007. *See* 8 C.F.R. § 103.7. As the instant appeal was filed with the Texas Service Center on July 25, 2007, the correct filing fee was \$385.00.

**ORDER:** The appeal is dismissed.

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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 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). Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2). As the appeal was untimely filed and does not qualify as a motion, the appeal may alternatively be rejected.