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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: [REDACTED]
LIN 09 169 51543

Office: NEBRASKA SERVICE CENTER

Date: **AUG 04 2010**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: 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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. Please be advised that any further inquiry that you might have concerning your case must be made to the AAO.

Thank you,


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The petitioner filed a motion to reconsider the director's decision. The director granted the motion to reconsider and affirmed his previous decision denying the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will 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 in response to the petitioner's motion to reconsider on January 27, 2010. The appeal was received by the director on June 30, 2010, 154 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, it must be rejected.

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.

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).

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, the appeal will not be treated as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

It is noted that, in support of the motion to reconsider, the petitioner submitted a letter from the chair and former chair of the petitioner's cardiology department which addressed the beneficiary's qualifications for the proffered position. The director's January 27, 2010 decision did not specifically address or analyze this letter. Therefore, the AAO is certifying the director's decision, dated January 27, 2010, to itself pursuant to 8 C.F.R. §§ 103.4(a)(4) and (a)(5). The petitioner is granted thirty (30) days after service of this notice to submit a brief to the AAO. After receipt of the petitioner's brief or the expiration of the thirty (30)-day timeframe, the AAO will issue a new decision. *See* 8 C.F.R. § 103.4(a)(2).

As the appeal was untimely filed, the appeal must be rejected. The director's January 27, 2010 decision is certified to the AAO and the petitioner is hereby provided thirty (30) days to submit a brief.

ORDER: The appeal is rejected. The director's decision, dated January 27, 2010, is certified to the AAO.