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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

VILLA JEAN
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CHANDLER, AZ 85225

B6

FILE: [REDACTED]
SRC 08 800 05339

Office: TEXAS SERVICE CENTER

Date: **AUG 06 2010**

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

PETITION: Immigrant Petition for Other Worker Pursuant to § 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 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.

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, with a fee of \$585. 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 preference 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 dismissed.

The petitioner is an assisted living facility. It seeks to employ the beneficiary permanently in the United States as a health care practitioner. The director determined that the petitioner had not complied with the instructions for electronic filing by submitting supporting documentation. The director denied the petition accordingly.

On appeal, counsel asserts:

The denial in this case was without cause. The denial is based upon petitioner's alleged failure to provide supporting evidence, such as, for example, the approved labor certification, beneficiary's caregiver training certificate, petitioner's business license and tax returns, etc. All of the above were provided to the Texas Service Center (without the issuance of an RFE (which was never issued in this case)).¹ Said supporting documentation was received by the TSC on 9/15/2008. Enclosed herein as Exhibit One is a copy of the supporting documentation packet along with the certified receipt (reference number 7008 0150 0002 7595 6007). Enclosed herein as Exhibit 2 is a copy of the conformed [sic] certified mail domestic return receipt with the exact same reference number. Said receipt is proof that the initial evidence as required by the regulations was received by TSC on 09/15/2008 by "A.M. 77."

The petition was electronically filed on January 3, 2008. Seven business days after that date is January 14, 2008. The receipt submitted on appeal is evidence that the petitioner submitted the supporting documentation, but not until more than seven business days after electronically filing the petition.

As stated by the director, the regulation at 8 C.F.R. § 103.2(a)(1) provides that the instructions for filing applications and petitions are "incorporated into the particular section of the regulations in this chapter requiring its submission." The instructions for electronic filing a Form I-140 and the general electronic filing instructions regarding the submission of supporting documentation are available at www.uscis.gov. The instructions for electronic filing provide that if the petitioner does not submit the required initial evidence in the requisite time period,² the petitioner "will not establish a basis for

¹ The regulation at 8 C.F.R. § 103.2(b)(8) states in pertinent part:

- (ii) Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS, in its discretion, may deny the application or petition for lack of initial evidence for ineligibility. . .

In the instant case, the instructions for electronic filing a Form I-140 specifically states that the required initial evidence must be received by the Service Center within seven business days of e-filing the Form. Therefore, the director is not obligated to issue a request for evidence when the instructions clearly and explicitly informed the petitioner of this requirement.

² Seven business days.

eligibility and we may deny your petition or application.” The petitioner did not submit the required initial evidence within seven business days³ from the date of electronic filing. Thus, the petitioner did not establish a basis for eligibility and the director did not err in denying the petition.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met its burden.

ORDER: The appeal is dismissed.

³ The supporting documentation was not submitted until September 15, 2008, more than eight months after the petition was electronically filed.