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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**



B6

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: FEB 23 2011

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

PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker 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 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 \$630. 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 Rhey  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the immigrant visa petition on November 21, 2008. The petitioner appealed the decision to the Administrative Appeals Office (AAO) on December 24, 2008. The AAO dismissed the appeal on September 2, 2010. The petitioner incorrectly submitted a motion to reopen/reconsider with the applicable fees directly to the AAO on September 30, 2010. The AAO responded to the petitioner on October 1, 2010, stating that the petitioner's motion and fee must be sent to the Texas Service Center where the petitioner had filed the original Form I-140 petition. The petitioner re-submitted his motion to the Texas Service Center on October 13, 2010. The motion will be dismissed 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).

Pursuant to 8 C.F.R. §103.5(a)(1)(iii)(D) and (E), motions to reopen and reconsider must be addressed to the official having jurisdiction and must be submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction. In the instant case, counsel filed the initial motion with the AAO instead of the Service Center having jurisdiction over the matter. The AAO has no authority to accept appeals or motions. *See* 8 C.F.R. §103.3(a)(2)(i).

The record indicates that the AAO issued the decision on September 2, 2010. It is noted that the AAO properly gave notice to the petitioner that it had 30 days to file the motion to reopen/reconsider. Although counsel dated the motion September 29, 2010, it was received by the director on October 13, 2010, 41 days after the decision was issued. Accordingly, the motion was untimely filed. The director erroneously annotated the motion as timely and forwarded the matter to the AAO.

Neither the Immigration and Nationality Act (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.

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 United States Citizenship and Immigration Services 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 must be rejected.

**ORDER:** The motion is dismissed.