

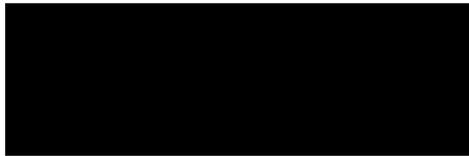
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



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FILE:



Office: TEXAS SERVICE CENTER Date:

MAR 04 2011

IN RE:

Petitioner:



Beneficiary:

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:



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 Riew

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the immigrant visa petition on October 8, 2008. The petitioner appealed the decision to the Administrative Appeals Office (AAO) on November 3, 2008, and the AAO dismissed the appeal on November 4, 2010. Within the AAO's decision, it gave the petitioner notice that it could file a motion within 30 days of the decision date and that the fee for such a motion would increase from \$585.00 to \$630.00 on November 23, 2010. The petitioner filed a motion to reconsider the AAO's decision on December 3, 2010, but with a filing fee of \$585.00. The Texas Service Center returned the petitioner's motion, supporting documentation, and fee and advised the petitioner again that the fee was \$630.00. The petitioner re-submitted its motion, supporting documentation, and proper fee on December 21, 2010. The motion 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 AAO issued the decision on November 4, 2010. It is noted that the AAO properly gave notice to the petitioner that it had 33 days to file the motion. Although counsel dated the motion November 26, 2010, it was received by the director with the proper fee on December 21, 2010, 47 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.

The regulation at 8 C.F.R. § 103.2(a)(6) and (7) states:

Where to file. Except as otherwise provided in this chapter, an application or petition should be filed with the INS office or Service Center with jurisdiction over the application or petition and the place of residence of the applicant or petitioner as indicated in the instructions with the respective form.

Receipt date (i) General. An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 or part 245a of this chapter, shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date. An application or petition taken to a local Service office for the completion of biometric information prior to filing at a Service Center shall be considered received when physically received at a Service Center.

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 or motion.

As the motion was untimely filed, the motion must be rejected.

**ORDER:** The motion is rejected.