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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

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Date: Office: TEXAS SERVICE CENTER

FILE:

**MAY 05 2011**

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)

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 Rhew  
Chief, Administrative Appeals Office

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

The petitioner is a medical facility. It seeks to classify the beneficiary as an alien worker 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 or professional. The director determined that the petitioner had abandoned the petition by failing to submit the documentation requested in the Notice of Intent to Deny.

On appeal, counsel indicates that a brief and/or additional evidence will be forthcoming within thirty days.

The regulation at 8 C.F.R. § 103.2(b)(15) provides: "A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5."

Therefore, this office has no jurisdiction over the instant appeal and the appeal must be rejected on this basis. Rather, 8 C.F.R. § 103.5(a)(2) provides that denials due to abandonment may be challenged in a motion to reopen before the office that rendered the decision based on limited arguments.

Furthermore, it is noted that the director issued the notice of denial in the instant case on June 2, 2010. The record shows that counsel subsequently attempted to file an appeal with the TSC on December 27, 2010, but failed to include the full and proper fee of \$630.00. The director rejected the appeal on December 27, 2010, returning it to counsel with specific instructions that the appeal must be accompanied by the full and proper fee of \$630.00. Counsel subsequently filed the appeal with the full and proper fee on January 19, 2011.

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). In the instant case, the counsel filed the appeal with the full and proper fee on January 19, 2011, 231 days after the TSC issued its decision on June 2, 2010. It must be noted that even if counsel included the full and proper fee with the initial filing of the appeal on December 27, 2010, such filing would also be considered as untimely. Consequently, the appeal must also be rejected as untimely filed.

In addition, even if the AAO were to have jurisdiction over an appeal from a denial based upon abandonment and such appeal had been filed in a timely manner, the appeal in this matter would have been summarily dismissed, since the petitioner's appeal does not identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). Although counsel indicates that a brief and/or additional evidence would be forthcoming within 30 days, no such evidence or brief has been submitted. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with filing an appeal, neither the petitioner nor counsel has made any request to extend the 30-day deadline. Accordingly, even if the AAO had jurisdiction over the appeal, the appeal would be summarily dismissed.

Finally, even if the appeal were treated as a motion, it would be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4). Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. Pursuant to 8 C.F.R. § 103.5(a)(3), 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. As noted above, counsel stated that a brief and/or additional evidence would be submitted in 30 days. Over thirty days have passed, and no brief and/or evidence has been submitted or received. Even if a brief and/or evidence had been submitted, it could not have been considered in the context of a motion. Evidence and briefs must be submitted with the motion. Unlike appeals, the regulation pertaining to motions to reopen or reconsider does not permit briefs and/or evidence to be filed subsequently. Accordingly, as the filing does not meet the requirements of 8 C.F.R. §§ 103.5(a)(2) or (3), it would have been dismissed pursuant to 8 C.F.R. § 103.5(a)(4), if it were treated as a motion.

Therefore, as the appeal was not properly filed, it will be rejected, or in the alternative, summarily dismissed, or, if a motion, dismissed for failing to meet applicable requirements.<sup>1</sup>

**ORDER:** The appeal is rejected.

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<sup>1</sup> It is also noted that, according to the publicly available website of the New York Department of State, the petitioner in this matter was dissolved on October 6, 2008. Accordingly, if the appeal were not being rejected, this would call into question the petitioner's eligibility for the benefit sought as it appears that the petitioner is no longer a functioning business entity.