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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: **SEP 28 2010** OFFICE: NEBRASKA SERVICE CENTER

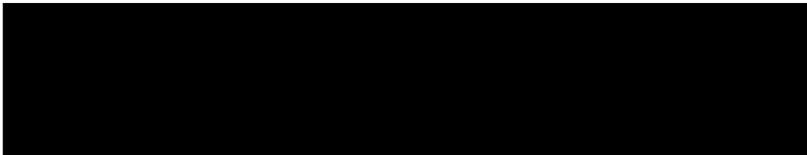
FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant petition for Alien Worker as a Skilled Worker or a Professional pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)

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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). The petition is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be rejected as untimely filed.

The petitioner is a hospital. It seeks to permanently employ the beneficiary in the United States as a registered nurse and to classify her as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).

The Director denied the petition on the ground that the ETA Form 9089, Application for Permanent Employment Certification, submitted with the petition did not comply with notice requirements specified in the regulations at 20 C.F.R. § 656.10(d).

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 completed 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 shows that the Director issued his decision on May 5, 2009. In that decision the Director properly gave notice to the petitioner that it had 33 days to file the appeal “with the appropriate filing fee required by Title 8, Code of Federal Regulations, Part 103.7 and a brief or other written statement in support of your appeal.” The documentation of record shows that the petitioner’s notice of appeal (Form I-290B) was received at the Nebraska Service Center on May 15, 2009, but that the check for the filing fee (in the amount of \$585) was returned unpaid to the petitioner with a new invoice on June 8, 2009. The petitioner sent a new check (in the amount of \$615) to the Office of the Chief Financial Officer, which was received on June 16, 2009, and reported to the Nebraska Service Center. Thus, the petitioner’s appeal was not perfected until June 16, 2009, which was 42 days after the decision was issued. Neither the Act nor the regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. Accordingly, the appeal 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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director of the Nebraska Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The matter will therefore be returned to the Director. If the Director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

As the appeal was untimely filed, it must be rejected by the AAO.

ORDER: The appeal is rejected.