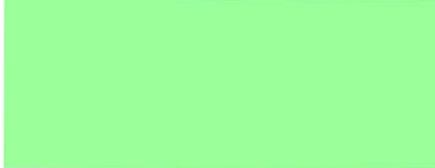


(b)(6)

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



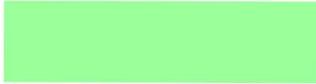
U.S. Citizenship  
and Immigration  
Services



Date: **APR 03 2012**

Office: NEBRASKA SERVICE CENTER

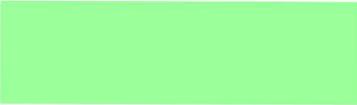
FILE:



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.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the immigrant visa petition. The petitioner appealed and the matter is now before the Administrative Appeals Office (AAO). The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen and reconsider.

The petitioner is in the business of contract packaging, and seeks to employ the beneficiary permanently in the United States as a production manager, pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). The petition was filed with a copy of a labor certification approved by the Department of Labor (DOL) on July 6, 2007. The director denied the petition because the petitioner failed to submit the original Form ETA 750.<sup>1</sup>

<sup>1</sup> The regulation at 20 C.F.R. § 656.30(b)(2) provides: “An approved permanent labor certification *granted before July 16, 2007 expires* if not filed in support of a Form I-140 petition with the Department of Homeland Security *within 180 calendar days of July 16, 2007.*” (Emphasis added). In the instant case, the petition was filed on September 14, 2007 with a copy of a labor certification approved by the Department of Labor (DOL) on July 6, 2007. On March 4, 2009, the director denied the petition due to the lack of an original labor certification. On April 9, 2009, the petitioner filed an appeal and submitted the original Form ETA 750. 633 days passed after July 16, 2007 and prior to submitting the original labor certification with the filing of the petition with United States Citizenship and Immigration Services (USCIS).

Beyond the decision of the director, the petitioner has failed to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. See 8 C.F.R. § 204.5(g)(2). The petitioner failed to submit complete tax returns with his adjusted gross income and his monthly expenses.

Beyond the decision of the director, the petitioner has also not established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). In the instant case, the labor certification states that the offered position requires eight years of grade school, four years of high school, and two years of experience as a production manager. The beneficiary’s claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary’s experience. See 8 C.F.R. § 204.5(l)(3)(ii)(A). The record contains a letter from [REDACTED] issued on December 17, 2002. The letter fails to identify the writer’s title and does not list the beneficiary’s job duties. Further, no diplomas or transcripts were submitted. The AAO notes that, based on the dates listed on the labor certification, it appears the beneficiary only attended for two years and nine months.

The AAO also notes that the same signature appears on multiple forms as either the beneficiary’s signature or the petitioner’s signature. The signature appears as the petitioner’s signature on the second page of the labor certification and on page three of the I-140. The signature appears as the beneficiary’s signature on the G-28 submitted with the I-140 on September 11, 2007. The signature also appears on the G-28 submitted for the I-290B on July 7, 2011 without a printed designation.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(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 service center director issued the decision on March 4, 2009. It is noted that the service center director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

Although counsel dated the Form I-290B March 31, 2009, it was not received by the service center until April 9, 2009, or 36 days after the decision was issued. Accordingly, the appeal was untimely filed.

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, the appeal must be rejected.

**ORDER:** The appeal is rejected.

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These inconsistencies must be resolved with any future filings.