

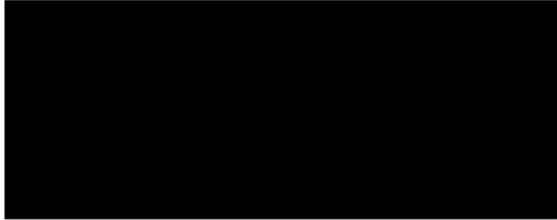
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B6

DATE: APR 19 2012 OFFICE: NEBRASKA SERVICE CENTER

IN RE:

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:

This is the decision of the Administrative Appeals Office in your case. All documents related to this matter have been returned to the office that originally decided your case. Any further inquiry 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 filed a motion to reopen and reconsider that decision. On March 25, 2009, the director granted the motion to reopen/reconsider, but determined that the motion did not overcome the grounds for denial set forth in the director's original decision and affirmed his prior decision denying the petition. The petitioner appealed that decision on April 28, 2009. 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.

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 submit 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 submission, but the date of actual receipt with the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i).

The director issued the decision on March 25, 2009.¹ The 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.

The Form I-290B, Notice of Appeal or Motion, was received by the service center on April 28, 2009, or 34 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, Nebraska Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the matter will 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.

¹ United States Citizenship and Immigration Services (USCIS) records indicate that the petitioner's mailing address is [REDACTED]. In the petitioner's March 5, 2009 motion to reopen/reconsider, the petitioner states that he has not received a decision from the director denying the petition, but, if there were a denial he wished to appeal the decision and asked that the decision be reconsidered. While the petitioner did not submit a change of address form to USCIS, he did note that his business had moved and submitted a business rental agreement showing an address of [REDACTED]. Whether this address is still valid is unclear. Public information online still shows the petitioner's address as the same as it is listed on the Form I-140. The petitioner listed the following address on the Form I-290B submitted April 28, 2009 appealing the director's March 25, 2009 decision: [REDACTED].

[REDACTED] did not file a Form G-28 in these proceedings and their relationship to the petitioner in these proceedings is unclear. Therefore, this decision will be sent to the petitioner only.

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

ORDER: The appeal is rejected.