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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

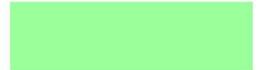


Date:

**JUL 25 2012**

Office: NEBRASKA SERVICE CENTER

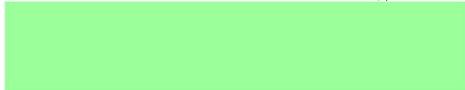
FILE:



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:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. 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 seeks to classify the beneficiary 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. The director determined that the I-140 petition was submitted without all of the required initial evidence, specifically evidence of the beneficiary s experience and evidence of the petitioner s ability to pay the proffered wage.

The director denied the petition accordingly on April 6, 2009. 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 May 26, 2009, 50 days after the decision was issued. Accordingly, the appeal was 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 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 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).

As the brief in this matter was submitted directly to the AAO in accordance with 8 C.F.R. ^ 103.3(a)(2)(viii), the director did not have an opportunity to review the late appeal to determine whether it meets the requirements of a motion to reopen or a motion to reconsider. 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.

As the appeal was untimely filed, the appeal must be rejected.<sup>1</sup>

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<sup>1</sup> In addition, the appeal was filed without a properly executed G-28. The regulation at 8 C.F.R. ^ 292.4(a) requires that a Form G-28 be filed . . . by the attorney or accredited representative appearing in each case and must be properly completed and signed by the petitioner, applicant or respondent to authorize representation in order for the appearance to be recognized by DHS. The G-28 submitted with the petition includes only a photocopy of the petitioner s signature without an original.

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**ORDER:** The appeal is rejected.