

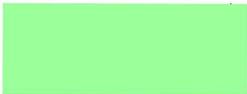
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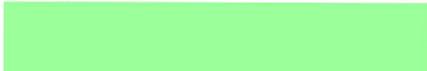


U.S. Citizenship
and Immigration
Services



DATE: **FEB 28 2013** 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)

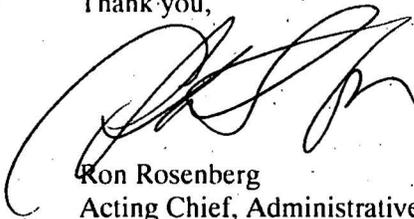
ON BEHALF OF PETITIONER:



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,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to 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 must appeal an unfavorable decision within 30 days of service. 8 C.F.R. § 103.3(a)(2)(i). If the unfavorable decision was mailed, the appeal must be filed within 33 days. 8 C.F.R. § 103.8(b). An untimely appeal must be rejected as improperly filed. Neither the Act nor the regulations grant the AAO authority to extend this time limit.

The filing date is the actual date of receipt at the location designated for filing. 8 C.F.R. § 103.2(a)(7)(i). The appeal must be signed and submitted with the correct fee. *Id.*

The director issued the decision denying the petition on January 20, 2010. The director properly gave notice to the petitioner that it had 33 days to file the appeal.¹ The petitioner filed the Form I-290B, Notice of Appeal or Motion, on February 25, 2010, or 36 days after the decision was issued. Accordingly, the appeal is untimely.

If an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2). 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. 8 C.F.R. § 103.5(a)(1)(ii).

As the appeal brief and additional evidence in this matter were 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

¹ Counsel states on appeal that the petitioner did not receive notice of the director's denial (January 20, 2010) and requested additional time to submit a brief. Counsel submitted online printouts to show that the petition's denial was assertedly discovered in connection with a Request For Evidence related to the beneficiary's Form I-485 Application to Register Permanent Residence or Adjust Status. Counsel also noted that it had requested a copy of the director's decision denying the petition. The record shows that a copy of the decision was sent to counsel on April 13, 2010. The petitioner submitted, on appeal, copies of tax returns for 1999, 2000, 2001 and 2002.

The director's January 20, 2010 denial was mailed to the petitioner at its correct business address. As of that time, the present counsel had not entered his appearance in the case. Counsel first submitted a Form G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative) with the filing of the present appeal. Counsel signed and dated the document February 20, 2010, yet the appeal was not filed, as above stated, until February 25, 2010.

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untimely appeal to determine whether it meets the requirements of a motion to reopen or reconsider. Therefore, the matter will be returned to the director. If the director determines that the untimely appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued. If the director determines that the untimely appeal does not meet the requirements of a motion, no new decision will be issued.

The untimely appeal must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(I).

ORDER: The appeal is rejected.