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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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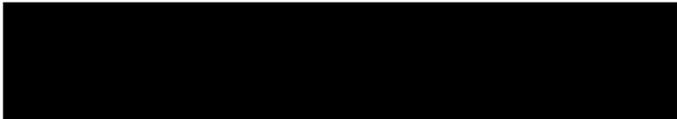
File: WAC 09 146 52589 Office: CALIFORNIA SERVICE CENTER Date:

APR 30 2010

IN RE:

Petitioner:

Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as 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 must file the complete appeal within 30 days of service of the unfavorable decision “with the office where the unfavorable decision was made.” If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a United States Citizenship and Immigration Services (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on September 25, 2009. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Additionally, the decision included the following instructions:

The petitioner may, if he or she wishes, appeal the Director’s decision using the enclosed Notice of Appeal to the Administrative Appeals Office (“AAO”), Form I-290B. The petitioner must submit such an appeal to **THIS OFFICE** with a filing fee of \$585.00. Do NOT send the appeal directly to the AAO.

(Emphasis in original).

According to the initial date stamp on the Form I-290B Notice of Appeal, it was received by the AAO on October 30, 2009 with the filing fee of \$585. On November 3, 2009, the AAO returned the appeal to the petitioner and advised that the Notice of Appeal and fee must be filed with the service center which rendered the decision. The materials were then submitted to the California Service Center on November 16, 2009, or 52 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.

An untimely-filed appeal must meet specific requirements to be treated as a motion. The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Furthermore, 8 C.F.R. § 103.5(a)(3) requires that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy.

Review of the record indicates that the appeal does not meet either of these requirements. On appeal, the petitioner stated that the beneficiary is eligible for the classification sought since it demonstrated that all four

criteria defining a specialty occupation have been met. The petitioner, however, did not specifically identify any erroneous conclusion of law or statement of fact. The petitioner does not provide any new facts to be considered in the reopened proceeding, nor does the petitioner provide affidavits or other documentary evidence. Furthermore, the petitioner neither states a clear reason for reconsideration nor provides any pertinent precedent decision to establish that the decision was based on an incorrect application of law or USCIS policy. For these reasons, the appeal will not be treated as a motion to reopen or reconsider.

As the appeal was untimely filed and as it does not meet the requirements of a motion to reopen or a motion to reconsider, the appeal must be rejected.

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

ORDER: The appeal is rejected.