



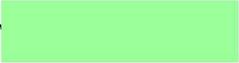
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: FEB 04 2013

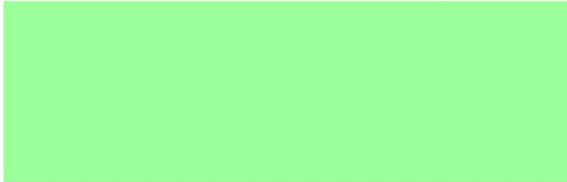
OFFICE: CALIFORNIA SERVICE CENTER

FILE: 

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. Under separate cover, the AAO will notify the petitioner and its counsel that the AAO is reopening the proceeding *sua sponte*.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the instant nonimmigrant visa petition. The petitioner submitted an appeal, and the Administrative Appeals Office (AAO) dismissed the appeal as moot. The matter is again before the AAO on a motion to reconsider. The motion to reconsider will be dismissed.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on January 15, 2010. On the Form I-129 visa petition, the petitioner describes itself as an educational services organization established in 1845. In order to employ the beneficiary in what it designates as an event coordinator position, the petitioner seeks to classify the beneficiary as a nonimmigrant worker in a specialty occupation 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).

The director denied the petition on March 11, 2010. Thereafter, the petitioner submitted an appeal. The AAO reviewed the submission and dismissed the appeal as moot. In the AAO's decision dismissing the appeal, the AAO stated that "[a]ll of the documents related to this matter have been returned to the office that originally decided [the] case." The AAO notified the petitioner and counsel "that any further inquiry that [the petitioner] might have concerning [the] case must be made to that office." The AAO also informed the petitioner and counsel that "all motions must be submitted to the office that originally decided [the] case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630." Notably, the instructions to the Form I-290B clearly state, "Do **not** send your appeal or motion directly to the Administrative Appeals Office (AAO)."

Counsel submitted a Form I-290B motion and filing fee directly to the AAO on May 7, 2012. The record indicates that the AAO received the materials and immediately mailed them back to counsel, along with a letter indicating that the motion must be submitted to the service center which rendered the original decision, i.e. the California Service Center. Counsel resubmitted the Form I-290B motion to the California Service Center. It was received by the service center on May 16, 2012, 41 days after the prior decision was issued. Accordingly, the motion was untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a motion to reconsider "must be filed within 30 days of the decision that the motion seeks to reconsider." If the decision was mailed, the motion 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 regulations state that a benefit request that is rejected will not retain a filing date. *See* 8 C.F.R. § 103.2(a)(7)(iii).

Failure to timely file a motion to reopen may be excused, at the discretion of the U.S. Citizenship and Immigration Service, where the delay is reasonable and is demonstrated to be beyond the petitioner's control. 8 C.F.R. § 103.5(a)(1)(i). No such discretion may be exercised, however, with regard to a motion to reconsider. Even if the instant motion had been filed as a motion to reopen (which it was not), the petitioner and counsel have not demonstrated, nor even asserted, that the delay was beyond the petitioner's control. Accordingly, the motion to reconsider must be dismissed because it was untimely filed.

Furthermore, the AAO notes that the submission does not satisfy the requirements of a motion to reconsider. Specifically, the regulation at 8 C.F.R. § 103.5(a)(1) states the following:

(iii) Filing Requirements—A motion shall be submitted on Form I-290B and may be accompanied by a brief. It must be:

* * *

(C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;

In this matter, the submission constituting the motion does not contain a statement as to whether or not the unfavorable decision has been or is the subject of any judicial proceeding as required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Thus, the petitioner and counsel failed to comply with the requirements as set by the regulations for properly filing a motion. Accordingly, the motion must be dismissed for this reason also.

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion to reconsider does not meet the applicable filing requirements, it must be dismissed.¹

ORDER: The motion is dismissed.

¹ The motion to reconsider is dismissed because it fails to meet the applicable requirements as discussed above. However, under separate cover, the AAO will notify the petitioner and its counsel that the AAO is reopening the proceeding *sua sponte*.