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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

D6



Date:

Office: VERMONT SERVICE CENTER

FILE:



EAC 10 905 80850

AUG 11 2011

IN RE:

Petitioner:

Beneficiary:



PETITION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The petition will remain denied.

The petitioner states that he is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Cuba, as the fiancé(e) of a United States citizen pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the nonimmigrant visa petition pursuant to 8 C.F.R. § 103.2(b)(8)(ii) because the petitioner failed to submit required initial evidence. On appeal, the petitioner submits electronic and written correspondence between him and the beneficiary that is not translated.

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a U.S. 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. 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. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued his decision on December 27, 2010. We note that the director properly informed the petitioner that he had 33 days to file appeal. The petitioner initially submitted the appeal without the requisite fee and the Vermont Service Center returned his submission. According to the date stamp on the Form I-290B, Notice of Appeal or Motion, the Vermont Service Center the petitioner's appeal was not properly filed until March 21, 2011, or 84 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)(1) states that an appeal which is not filed within the time allotted must be rejected as improperly filed. However, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that an untimely appeal that meets the requirements of a motion to reopen or reconsider must be treated as such and a decision made on the merits of the case.¹

Here, the petitioner's appeal does not meet the requirements of either a motion to reopen or reconsider. The record is still lacking the following required initial evidence, as described in the *Instructions* to the Form I-129F, Petition for Alien Fiancé(e): proof of the petitioner's U.S. citizenship; proof of the termination of his prior marriage; a Form G-325A, Biographic Information, for the petitioner and the beneficiary; two (2) passport-style color photographs of the petitioner and the beneficiary; evidence that the petitioner and the beneficiary met within the two-year period before the petition was filed or

¹ A motion to reopen must state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 USCIS policy. 8 C.F.R. § 103.5(a)(3).

evidence that the petitioner should be exempt from that requirement; and original statements from the petitioner and the beneficiary to establish their mutual intent to marry within 90 days of the beneficiary's admission into the United States in K-1 status.

As the appeal was not filed within the allotted time and the petitioner still has not submitted the required initial evidence, USCIS is not required to treat the late appeal as a motion to reopen or reconsider, and it is rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1). As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is rejected. The petition remains denied.