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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**



**PUBLIC COPY**

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **MAR 22 2011**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:

[Redacted]

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,

Jerry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the petition remanded to the director to treat as a motion.

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 the decision on August 10, 2010. It is noted that the director properly gave notice to the petitioner that he had 30 days to file the appeal and that the appeal must be filed with the California Service Center. The petitioner subsequently forwarded the Form I-290B, Notice of Appeal or Motion, to the AAO in error. An appeal/motion is not properly filed until the proper office, in this case the California Service Center, receives it. *See* 8 C.F.R. § 103.2(a)(7)(i). The appeal was not received by the California Service Center until September 16, 2010, which was 37 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 allowed must be rejected as improperly 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 USCIS policy.

Upon review, the petitioner submitted sufficient new evidence to meet the requirements for a motion to reopen. The director denied the petition because the petitioner did not establish that he and the beneficiary personally met within the two-year period immediately preceding the filing of the petition. On appeal, the petitioner submits additional evidence, including a personal statement dated August 30, 2010, and a photocopy of a receipt from the U.S. Post Office. Upon review, the petitioner submitted new evidence to address the director's objections. Accordingly, the petitioner's untimely filed appeal meets the requirements for a motion to reopen.

In view of the foregoing, the case will be remanded to the California Service Center to be considered as a motion to reopen. The director shall review all the evidence of record, including the evidence submitted on appeal in which the petitioner addresses the issue singled out by the director in the denial notice.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is rejected. The petition is remanded to the director for further consideration and entry of a new decision.