

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

87

**PUBLIC COPY**

[REDACTED]

FILE: SRC 03 244 56921 Office: TEXAS SERVICE CENTER Date: DEC 26 2007

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

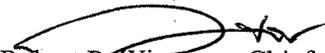
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[REDACTED]

**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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center denied the nonimmigrant visa petition and a subsequent appeal was rejected by the Administrative Appeals Office (AAO) for being untimely filed. The AAO also rejected the petitioner's subsequent motion, stating that the properly rejected appeal left no decision for the AAO to reconsider or reopen. The matter presently before the AAO is an appeal of the rejected motion. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The AAO notes that counsel filed the petitioner's most recent appeal using Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer, it must be noted that the Board of Immigration Appeals does not have jurisdiction over this matter. *See* 8 C.F.R. § 1003.1(b). The AAO properly has jurisdiction to review any appeal in this matter.<sup>1</sup> Based on the petitioner's untimely filing, the AAO rejected the appeal, thereby denying the petitioner's request to review the director's underlying denial of the nonimmigrant petition. Accordingly, the petitioner's subsequent motion was rejected, as the AAO did not issue an appellate decision. Despite counsel's filing of an appeal in response to the AAO's rejection of the petitioner's motion, there are no regulatory provisions that allow a petitioner to appeal an AAO decision on an appeal or motion. Rather, the petitioner may file a motion pursuant to 8 C.F.R. § 103.5(a)(8). However, even if the AAO were to treat the petitioner's most recently filed appeal as a motion, the motion would be dismissed due to its improper and untimely filing.

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a Citizenship and Immigration Services (CIS) 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*. In the instant matter, the record shows that the petitioner's latest filing was accompanied by a fee of \$110. However, 8 C.F.R. § 103.7 states that the filing fee for an appeal or motion is \$385. Thus, the petitioner submitted an insufficient filing fee with its latest submission.

Additionally, in order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion 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 failure to file before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS 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 motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

In the instant matter, the record shows that the AAO's latest decision regarding the L-1A petition was issued on March 1, 2006. Although the petitioner's initial attempt to file the second appeal was in March of 2006,<sup>2</sup> the AAO returned the submission with a notice informing counsel that the AAO does not directly accept or process appeals or fees. The notice provided counsel with information regarding proper filing procedures.

---

<sup>1</sup> The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1(U) *supra*; 8 C.F.R. § 103.3(a)(iv).

<sup>2</sup> The exact date of the initial filing attempt is not clear.

The petitioner ultimately resubmitted the appeal, with an improper filing fee, on April 10, 2006, or 40 days after the AAO issued its latest notice. Therefore, the appeal was untimely and improperly filed and would have been dismissed if it had been treated as a motion. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

As the appeal was not properly filed, it will be rejected.

**ORDER:** The appeal is rejected.