

identifying data deleted to
clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B6

FILE:

LIN 07 061 53242

Office: NEBRASKA SERVICE CENTER

Date: SEP 10 2009

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant 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 after 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 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 record indicates that the director issued the decision on April 4, 2008. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Although the decision was sent to prior counsel, counsel acknowledges that the decision was forwarded to her by prior counsel. Counsel has also submitted a copy of an envelope which prior counsel used to forward the decision. That envelope is postmarked April 18, 2008. Thus, it is clear that counsel had sufficient time to timely file the appeal. However, the appeal was received by the director on May 13, 2008, 39 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be 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 U.S. Citizenship and Immigration Services (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore the appeal will not be treated as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).¹

¹ A review of the decision reveals that the director accurately set forth a legitimate basis for denial of the petition. On appeal, counsel states that the director failed to properly consider the evidence regarding the beneficiary's qualifications and that the director's decision is "based on a faulty assumption and is inconsistent with law, regulations and case law." However, counsel failed to specifically address the director's analysis of the evidence, and did not furnish any additional evidence. Counsel indicated on the Form I-290B, Notice of Appeal or Motion, that brief and/or additional evidence would be submitted to the AAO within 30 days. However, no such brief or evidence has been received by the AAO. The regulation at 8 CFR §§ 103.3(a)(2)(vii) and (viii) states that an affected party may make a written request to the AAO for additional time to submit a brief and that, if the AAO grants the affected additional time, it may submit the brief directly to the AAO. Therefore, as 8 C.F.R. §

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.

103.3(a)(1)(v) requires the AAO to summarily dismiss an appeal when the appellant fails to identify specifically any erroneous conclusion of law or statement of fact, the AAO would be obligated to summarily dismiss the current appeal if the appeal were not being rejected as untimely.