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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted] Office: California Service Center Date: JAN 03 2002

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted] Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

According to 8 C.F.R. 103.3(a)(2)(i), an appeal must be filed with the office where the unfavorable decision was made within 30 days after service of the decision. 8 C.F.R. 103.5a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period.

The director issued his decision on October 30, 2000. The appeal was received on December 1, 2000. The check submitted as the fee for the appeal, however, was returned for insufficient funds. 8 C.F.R. 103.2(a)(7)(i) provides that where the fee is paid by a check returned for insufficient funds, the form does not retain its filing date. The check was finally paid on February 15, 2001, making that date the filing date for the appeal. The appeal was therefore filed untimely.

8 C.F.R. 103.3(a)(2)(v)(B) states that an appeal that is not filed within the time allowed must be rejected as improperly filed; however, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. 103.5(a)(3), the appeal must be treated as a motion.

According to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. 103.5(a)(3), 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 Service policy.

According to 8 C.F.R. 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. In this case, the disputed decision was rendered by the director; the AAU has no jurisdiction over this motion. The director must issue a decision on this motion pursuant to the regulations governing motions to reopen and/or reconsider. As counsel requested an additional 30 days in which to submit a brief and/or evidence to support the appeal and failed to do so, it does not appear that the appeal meets the definition of a motion.

ORDER: The appeal is rejected.