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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 07 2004

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Marin Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner seeks classification of the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the culinary arts. The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Under the provisions of 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. The regulation at 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 her decision on March 21, 2003. The Form I-290B, Notice of Appeal to the Administrative Appeals Unit, signed by the beneficiary, was rejected by the service center as improperly signed. The appeal, properly signed by the petitioner, was received on May 5, 2003. The appeal was therefore filed untimely.

The regulation at 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 CIS policy.

Under the provisions of 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 service center director rendered the disputed decision; therefore the AAO would have no jurisdiction over a motion at this juncture.

We note, however, that on appeal, the petitioner simply questions the return of its filing fees without explanation. On the Form I-290B, the petitioner indicates that a brief and/or new evidence would be forwarded to the AAO within 30 days of the appeal; however, as of the date of this decision, no additional documentation has been received by the AAO. The petitioner submits no new evidence and presents no arguments based on precedential decisions establishing that the director's decision was based on an incorrect application of law or policy. Accordingly, this untimely appeal does not meet the requirements of a motion to reopen or reconsider.

ORDER: The appeal is rejected.