U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16776329

Date: MAY 24, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Professional

The Petitioner seeks to employ the Beneficiary as a junior construction manager. It requests classification of the Beneficiary under the third-preference, immigrant classification for professional workers. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based, "EB-3" category allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary met the minimum requirements for the offered position.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will reject the appeal.

An unfavorable decision must be appealed within 33 calendar days of the date it was mailed. 8 C.F.R. §§ 103.8(b), 103.3(a)(2)(i). An untimely appeal must be rejected as improperly filed. The filing date is the actual date of receipt at the location designated for filing. 8 C.F.R. § 103.2(a)(7)(i). The appeal must be signed and submitted with the correct fee. *Id.*

Under special rules that U.S. Citizenship and Immigration Services (USCIS) implemented during the current, COVID-19 pandemic, a petitioner may generally file an appeal up to 63 days after the issuance of a mailed decision. USCIS Alert, "USCIS Extends Flexibility for Responding to Agency Requests," (Mar. 24, 2021), https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-4; *see also* 8 C.F.R. § 103.8(b) (adding three days to filing deadlines if USCIS serves decisions or notices by mail). The Petitioner's filing arrived 71 days after the date of the Director's decision.

The Director issued the decision denying the petition on June 11, 2020 and properly gave notice to the Petitioner that it had 33 days to file the appeal. Although the above noted filing flexibilities apply here, the Petitioner filed the Form I-290B, Notice of Appeal or Motion, on August 21, 2020, or 71 days after the decision was issued. Accordingly, the appeal is untimely.

If an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*). The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director, Texas Service Center. 8 C.F.R. § 103.5(a)(1)(ii). As required by 8 C.F.R. § 103.3(a)(2)(ii)-(iv), the Director reviewed the appeal prior to forwarding it to the AAO, and did not conclude that it met the requirements of a motion or otherwise warrant favorable action.

The untimely appeal must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(*1*).

ORDER: The appeal is rejected.