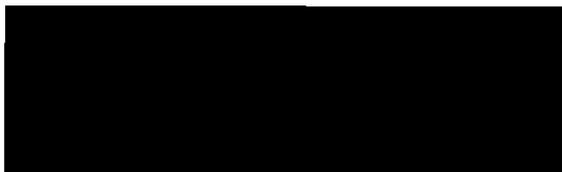


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 20-01
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B2

DATE: JUL 17 2012

Office: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner: 
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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on May 12, 2011, and 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 or the attorney or representative of record must submit the complete appeal 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. § 103.8(b). The regulation at 8 C.F.R. § 1.2 explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. The date of filing is not the date of submission, but the date of actual receipt with the proper signature and the required fee. See 8 C.F.R. § 103.2(a)(7)(i). The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) provides that an appeal which is not filed with the time allowed must be rejected as improperly filed.

The record indicates that the director issued the unfavorable decision on May 12, 2011. The decision was served on counsel via facsimile on May 12, 2011. The director properly gave notice to the petitioner that he had 30 days of the date of the decision to file an appeal. Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend this time limit. See *Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006). Even if the appeal was delayed by the overnight delivery service, the error would not warrant special consideration of the appeal. *Id.*

In this case, counsel dated the Notice of Appeal or Motion, Form I-290B, June 13, 2011. The envelope in which Form I-290B was mailed indicates that counsel paid the mailing postage on June 14, 2011, and that U.S. Citizenship and Immigration Services (USCIS) received the Form I-290B on Thursday, June 16, 2011. In other words, USCIS did not receive the appeal until 35 days after the unfavorable decision was issued. Accordingly, the appeal was untimely filed.

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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case, the director. See 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.