

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



U.S. Citizenship
and Immigration
Services

[Redacted]

B4

DATE: NOV 14 2012 OFFICE: TEXAS SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[Redacted]

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

[Handwritten mark]

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which 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 date of filing is not the date of submission, but the date of actual receipt with the required fee. *See 8 C.F.R. § 103.2(a)(7)(i).*

The record indicates that the service center director issued the decision on July 28, 2011. It is noted that the service center director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

On appeal, the petitioner and counsel claim that they never received the notice of denial. In support of these assertions, counsel for the petitioner states that “petitioner and counsel are only aware of the denial by checking the USCIS online case status.” The petitioner also submits a statement that it did not receive the decision and has called the USCIS national customer service and contacted the AILA liaison for the Texas Service Center. The petitioner did not submit documents evidencing its attempt to determine the status of the petition.

However, an uncorroborated, self-serving denial of receipt is weak evidence, even if sworn. *Joshi v. Ashcroft*, 389 F.3d 732, 735-736 (7th Cir. 2004). Absent independent and objective evidence to support the petitioner’s claim that it did not receive a copy of the director’s denial, the AAO finds that the director’s decision was properly issued by routine service. 8 C.F.R. § 103.8(a). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998).

USCIS records confirm that the director issued the denial on July 28, 2011. Although the petitioner signed and dated the Form I-290B as of August 25, 2011, the service center did not receive the appeal until September 2, 2011, or 36 days after the director issued the decision. 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 of the Texas Service Center. *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.