

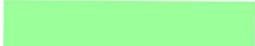
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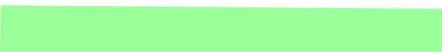
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: **AUG 02 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

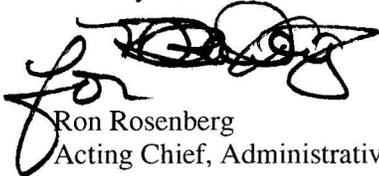
PETITION: Petition for a Commonwealth of the Northern Mariana Islands (CNMI) Only Nonimmigrant Transitional Worker Classification Pursuant to 48 U.S.C. § 1806(d)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "for Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly filed.

The petitioner submitted a Petition for a CNMI-Only Nonimmigrant Transitional Worker (Form I-129CW) to the California Service Center on August 7, 2012. In the Form I-129CW visa petition, the petitioner describes itself as a business consisting of tour agency, general merchandise retail store, rental shop, and massage parlor that was established in 2009. In order to employ the beneficiary in what it designates as an office manager position, the petitioner seeks to classify him as a CNMI-Only Nonimmigrant Transitional Worker (CW-1) pursuant to 48 U.S.C. § 1806(d).

The director denied the petition on February 1, 2013, finding that the petitioner failed to establish that the beneficiary was lawfully present in the Commonwealth of the Northern Mariana Islands (CNMI) at the time the petition was filed. Subsequently, an appeal was filed.<sup>1</sup>

The AAO reviewed the submission and finds that the appeal was not properly filed as it was not submitted by an affected party. In the instant case, the Notice of Appeal or Motion (Form I-290B) was signed by the beneficiary. In support of the appeal, the beneficiary submitted a letter requesting U.S. Citizenship and Immigration Services (USCIS) "hear my appeal." USCIS regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). Moreover, the regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically states that a beneficiary of a visa petition is not an affected party and does not have any legal standing in a proceeding. As the beneficiary has no legal standing in this proceeding, the

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<sup>1</sup> 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 file 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 filing date is not the date the submission is mailed, but the date of actual receipt. See 8 C.F.R. § 103.2(a)(7)(i).

In the instant case, the AAO notes that the appeal was untimely filed. The record of proceeding indicates that the service center director issued the decision on February 1, 2013. It is noted that the service center director properly gave notice to the petitioner of the timeframe to file the appeal. U.S. Citizenship and Immigration Services (USCIS) received the Form I-290B on Thursday, March 7, 2013, which is 34 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Immigration and Nationality Act (the Act) nor the pertinent regulations grant the AAO authority to extend this time limit. Title 8 C.F.R. § 103.3(a)(2)(v)(B)(I) states in pertinent part that "[a]n appeal which is not timely filed within the time allowed must be rejected as improperly filed." The regulation is binding on USCIS in its administration of the Act, and it does not have the authority to extend the filing period. See, e.g., *Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission*, 613 F.2d 1120 (C.A.D.C., 1979) (an agency is bound by its own regulations); *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, (C.A.D.C., 1986) (an agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned). An agency is not entitled to deference if it fails to follow its own regulations. *U.S. v. Heffner*, 420 F.2d 809, (C.A. Md. 1969) (government agency must scrupulously observe rules or procedures which it has established and when it fails to do so its action cannot stand and courts will strike it down); *Morton v. Ruiz*, 415 U.S. 199 (1974) (where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures).

beneficiary is not authorized to file the appeal, and it must therefore be rejected as improperly filed. 8 C.F.R. § 103.3(a)(1)(iii)(B); 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

As the appeal was not properly filed, it must be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

**ORDER:** The appeal is rejected.