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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

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Date: **SEP 07 2011** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the instant nonimmigrant visa petition. The matter 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 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. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on January 26, 2011. The director properly gave notice to the petitioner that it had 33 days to file the appeal. Initially, rather than submitting the original appeal, counsel submitted a copy of the appeal, which was not accepted by the service center. The actual appeal was not submitted until Friday, March 11, 2011, 44 days after the decision was issued. Accordingly, the appeal was untimely filed.

In a letter submitted with the second submission, counsel asserted that the previous submission of a copy of the appeal was an inadvertent error by his office staff and asked that the appeal be accepted as timely. However, neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal.

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 Vermont 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.

Further, the AAO notes that, on appeal, counsel asserted that a brief and supporting evidence would be submitted within 30 days, but identified no specific error in the decision of denial. Counsel also checked Box B in Part 2 of Form I-290B to indicate that a brief or additional evidence, or both, would be submitted to the AAO within 30 days. No brief or evidence was submitted to the AAO, either with the form appeal or subsequently. Counsel's submissions on appeal contain no specific assignment of error. Alleging, directly or indirectly, that the director erred in some broad or unspecified way is an insufficient basis for an appeal.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." Counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal. Even if the appeal were not to be rejected as untimely, it would be summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).

ORDER: The appeal is rejected.