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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: **MAY 07 2013** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



Enclose please find 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,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be rejected as untimely pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The petitioner, metal import/export/recycling company, seeks to classify the beneficiary as an L-1B nonimmigrant intracompany transferee having specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). It seeks to employ the beneficiary in the position of marketing specialist for a three-year period. The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, or that she would be employed in a position that requires specialized knowledge.

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. 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the actual receipt of receipt at the designated filing location. 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the service center director issued the decision on July 8, 2008. 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.

Although counsel submits postal receipts indicating that the appeal was mailed on August 8, 2008, the appeal was received August 12, 2008, 35 days after the 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 of the Vermont Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the appeal did not meet the requirements of a motion.

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

ORDER: The appeal is rejected.

¹ On February 19, 2009, the director improperly issued a decision regarding the timeliness of the appeal. That decision is withdrawn. Once the director declines to treat the appeal as a motion to reconsider, the regulations state that the acting director "shall promptly forward the appeal and related record of proceeding to the AAO." 8 C.F.R. § 103.3(a)(2)(v)(A).