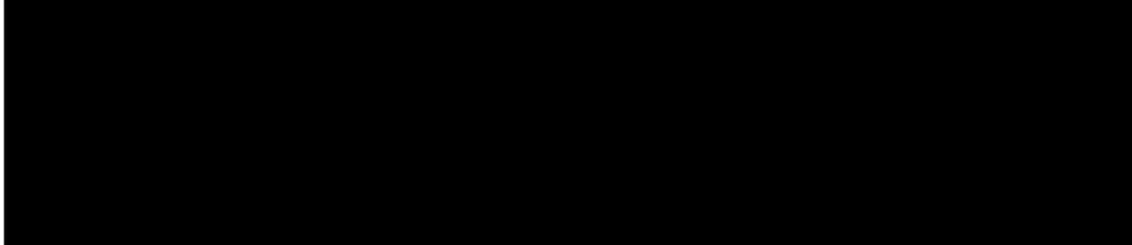


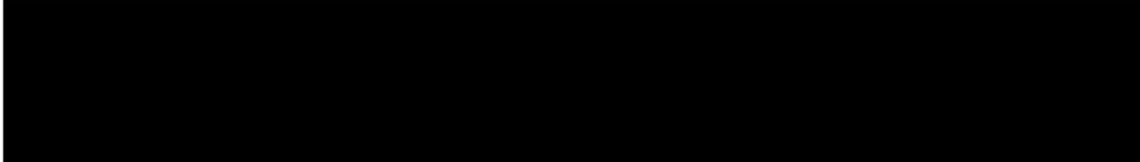
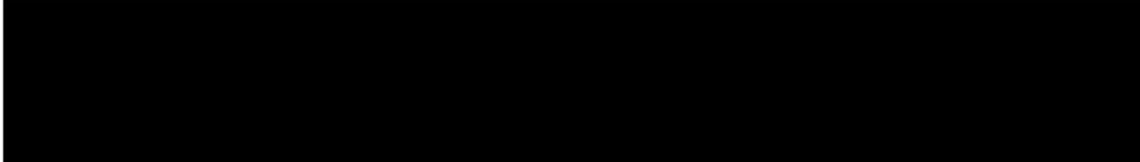


U.S. Citizenship  
and Immigration  
Services

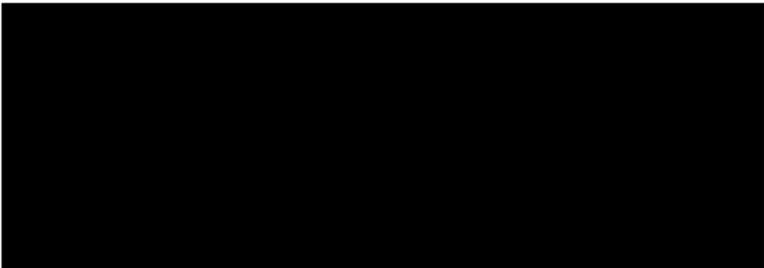


B2

DATE **DEC 20 2012** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

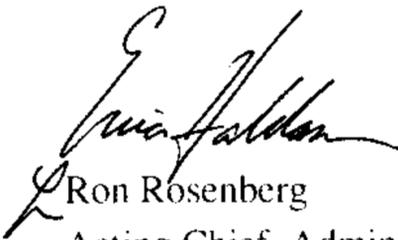
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to  
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:  


INSTRUCTIONS:

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.

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska 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 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 date 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 October 31, 2011. The petitioner had 33 days from the date of the decision to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The record reflects that the Form I-290B, Notice of Appeal or Motion, was initially submitted on November 30, 2011 but was subsequently rejected by United States Citizenship and Immigration Services on December 14, 2011 because "the check amount is incorrect, or has not been provided." The regulation at 8 C.F.R. § 103.2(a)(7)(iii) provides that a benefit request that is rejected will not retain a filing date.

Counsel re-filed the Form I-290B with the required filing fee on December 19, 2011, or 49 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 Nebraska 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.