



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **JUN 20 2013**

Office: TEXAS 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:

SELF-REPRESENTED

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,

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

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition on March 24, 2011. The Administrative Appeals Office (AAO) rejected the petitioner's appeal of that decision on June 29, 2012. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be rejected.

On June 29, 2012, the AAO rejected the petitioner's appeal, concluding that the petitioner failed to establish that he timely filed his appeal. The AAO's cover letter did not advise the petitioner that he had the option to file a motion. As the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reconsidered in this proceeding. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Therefore, the motion is rejected.

Furthermore, the current submission does not warrant reopening or reconsidering the AAO's rejection of the appeal. On motion, the petitioner asserts that his appeal was timely filed within the regulatory required 33 day period. In support of the motion, the petitioner submits what purports to be the tracking results for the mailing of the appeal. However, the tracking number on document the petitioner provides on motion, does not correlate with the tracking number on the envelope that accompanied the appeal. The AAO attempted to verify both tracking numbers on the website, but neither tracking number resulted in any information. The AAO also contacted which indicated that its record retention policy is to maintain records for only 18 months. Regardless, U.S. Citizenship and Immigration Services retained its recipient's copy of the for the appellate submission. The "From Date" on the airbill appears to be April 28, 2011, which was 35 days after the director's decision. Consequently, the evidence submitted on motion fails to establish that the petitioner timely filed the appeal.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (citing *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966)). Here, the petitioner has not sustained that burden.

**ORDER:** The motion to reconsider is rejected. The decision of the AAO dated June 29, 2012, is affirmed, and the petition remains denied.