



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: OFFICE: TEXAS SERVICE CENTER

FILE: [Redacted]

IN RE: **MAY 07 2013** PETITIONER: [Redacted]  
BENEFICIARY: [Redacted]

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:

[Redacted]

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the preference visa petition on December 5, 2012, 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 submit 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 regulation at 8 C.F.R. § 1.2 explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. The date of filing is not the date of submission, but the date of actual receipt with the proper signature and the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i). The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) provides that an appeal which is not filed within the time allowed must be rejected as improperly filed.

The record indicates that the director issued the unfavorable decision on December 5, 2012. The decision was mailed to the petitioner and counsel on the same day. As the director issued the decision by mail, the regulation at 8 C.F.R. § 103.8(b) applies and the petitioner's appeal must be filed within 33 days. Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the time limit to file an appeal. *See Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006). Even if the appeal was delayed by the overnight delivery service, the error would not warrant special consideration of the appeal. *Id.*

In this case, counsel dated the Form I-290B, Notice of Appeal or Motion, December 31, 2012. A United States Postal Service (USPS) mailing label indicates that counsel shipped the Form I-290B and accompanying documents on Friday, January 4, 2013. A USPS Track and Confirm online printout indicates that U.S. Citizenship and Immigration Services (USCIS) received the Form I-290B and documents on Tuesday, January 8, 2013. USCIS did not receive the properly filed appeal until 34 days after the director issued the unfavorable decision. To be timely, the petitioner should have filed the appeal on or before Monday, January 7, 2013. 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. *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.

Furthermore, even if the appeal were timely filed, it would be summarily dismissed pursuant to the regulation at 8 C.F.R. § 103.3(a)(1)(v), as counsel failed to specifically identify any erroneous conclusion of law or statement of fact for appeal. Rather, counsel stated in part 3 of the Form I-290B, in its entirety, that “[t]he petitioner thinks the adjudicating officer erroneously denied this petition. And thus filing this appeal to the AAO. Thank you for your consideration.” Counsel

failed to support his conclusory assertions with any legal or factual bases. Counsel further noted in part 2 of the Form I-290B that “[n]o supplemental brief and/or additional evidence will be submitted” in support of the appeal.

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

**ORDER:** The appeal is rejected.