(b)(6)

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: JUN 28 2013 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the petition. The petitioner filed an appeal with the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The petitioner subsequently filed a motion to reopen and reconsider with the AAO. The AAO granted the motion and affirmed the denial of the petition. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be rejected as untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1) states that in order to properly file a motion to reopen or reconsider, the affected party must file the motion within 30 days of service of the decision the motion seeks to reconsider or reopen. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(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). With regard to the motion to reopen, an untimely filing may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the petitioner's control.

The record indicates that the AAO issued the decision on September 14, 2012. The AAO notified the petitioner that it had 30 days to file the appeal. The motion in the present matter was received by U.S. Citizenship and Immigration Services on December 14, 2012, or 91 days after the decision was issued. Therefore, the motion was untimely filed.[1]

The petitioner neither claimed nor provided evidence to establish that delay in filing the motion beyond the permitted time period was reasonable and was beyond the petitioner's control. Therefore, the untimely filing of the motion cannot be excused and the untimely filed motion must be rejected. *See* 8 C.F.R. § 103.5(a)(1)(i).

ORDER: The motion is rejected as untimely filed.

---

[1] The petitioner indicated on Form I-290B, Notice of Appeal or Motion, that it would submit new evidence to substantiate its petition. As of the date of this notice, the petitioner has not submitted any new evidence to support the motion, nor has it provided any statement explaining the basis for the motion. Therefore, even if the instant motion had been timely filed, it would have been summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).