

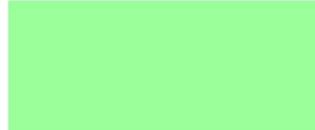


U.S. Citizenship
and Immigration
Services

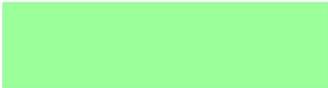
(b)(6)



DATE: **FEB 01 2013** OFFICE: TEXAS SERVICE CENTER

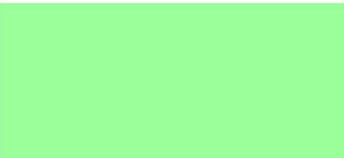


IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



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 employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) requires 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. Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.8(b).

A benefit request which is not signed will be rejected. 8 C.F.R. § 103.2(a)(7)(i). A benefit request which is rejected will not retain a filing date. 8 C.F.R. § 103.2(a)(7)(iii). According to the cited regulations, the appeal is not properly filed until the petitioner submits a signed Form I-290B, Notice of Appeal or Motion, with the required fee.

The record indicates that the service center director issued the decision on August 28, 2012. 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.

The petitioner, through counsel, submitted Form I-290B on September 26, 2012. The director rejected the appeal because there was no signature on the appeal form.

The petitioner resubmitted the newly signed appeal on October 9, 2012, with an explanatory note from counsel marked "Motion for Late Filing of Appeal." Counsel states: "I acknowledge that I did not sign the Form I-290B properly, but I request that this mistake not impact my client's case."

The appeal, as originally submitted, was unacceptable under the regulations cited above. The application of those regulations is not discretionary. The regulations are binding on U.S. Citizenship and Immigration Services (USCIS) employees in their administration of the Act. *See, e.g., Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission*, 613 F.2d 1120 (C.A.D.C., 1979) (an agency is bound by its own regulations); *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, (C.A.D.C., 1986) (an agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned). An agency is not entitled to deference if it fails to follow its own regulations. *U.S. v. Heffner*, 420 F.2d 809, (C.A. Md. 1969) (government agency must scrupulously observe rules or procedures which it has established and when it fails to do so its action cannot stand and courts will strike it down).

Because the appeal was untimely filed, the AAO must reject the appeal.

ORDER: The appeal is rejected.