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

(b)(6)

DATE: JUN 2 2 2012 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen and reconsider.

In order to file an appeal properly, 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 date of filing is not the date of submission, but the date of actual receipt with the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i).

The director issued the decision on **February 18, 2009**. The 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 Form I-290B, Notice of Appeal or Motion, was received by the service center on **March 30, 2009,** or 40 days after the decision was issued. Accordingly, the appeal was untimely filed.

It must be noted that Form I-290B, Notice of Appeal or Motion, was initially received by the service center on March 19, 2009. However, the appeal was rejected because it was not signed. Counsel asserts that United States Citizenship and Immigration Services (USCIS) should accept Form I-290B because the failure to sign the document amounts to a "technical issue."

However, the regulation at 8 C.F.R. § 103.2(a)(1) requires that all documents submitted to USCIS be executed and filed in accordance with the instructions on the form. It is noted that the Instructions to Form I-290B state in Part 4 that "[y]ou or your legal representative must sign and submit Form I-290B." The instructions further state that an appeal or motion must include a signed and completed Form I-290B.

The regulation at 8 C.F.R. § 103.2(a)(2) provides that an applicant or petitioner must sign his or her application or petition. Further, 8 C.F.R. § 103.2(a)(7)(i) provides that "[a]n application or petition which is not properly signed...shall be rejected as improperly filed." That provision provides that no unsigned applications or petitions will receive a receipt stamp.

In this matter, the petitioner attempted to file an appeal with an unsigned Form I-290B on March 19, 2009. As the Form I-290B was unsigned, it was properly rejected.

Therefore, the official date of receipt for Form I-290B is March 30, 2009, 40 days after the date the decision was issued. Accordingly, the appeal was untimely file.

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, Nebraska Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

As the brief in this matter was submitted directly to the AAO in accordance with 8 C.F.R. § 103.3(a)(2)(viii), the director did not have an opportunity to review the late appeal to determine whether it meets the requirements of a motion to reopen or a motion to reconsider. Therefore, the matter will be returned to the director. If the director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

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

ORDER: The appeal is rejected.