

(b)(6)



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

DATE: **APR 12 2013**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

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,

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. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be rejected as untimely filed.

The petitioner must appeal an unfavorable decision within 30 days of service. 8 C.F.R. § 103.3(a)(2)(i). If the unfavorable decision was mailed, the appeal must be filed within 33 days. 8 C.F.R. § 103.8(b). An untimely appeal must be rejected as improperly filed. Neither the Act nor the regulations grant the AAO authority to extend this time limit.

The filing date is the actual date of receipt at the location designated for filing. 8 C.F.R. § 103.2(a)(7)(i). The appeal must be signed and submitted with the correct fee. *Id.*

The director issued the decision denying the petition on August 20, 2011. The director properly gave notice to the petitioner that it had 33 days to file the appeal. The petitioner filed the Form I-290B, Notice of Appeal or Motion, on September 26, 2011,<sup>1</sup> or 37 days after the decision was issued. Accordingly, the appeal is untimely.<sup>2</sup>

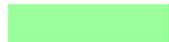
If an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director, Texas Service Center. 8 C.F.R. § 103.5(a)(1)(ii). As required by 8 C.F.R. § 103.3(a)(2)(ii)-(iv), the director reviewed the appeal prior to forwarding it to the AAO, and did not conclude that it met the requirements of a motion or otherwise warrant favorable action.

The untimely appeal must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

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<sup>1</sup> In fact, the record shows that the Form I-290B was only signed and mailed out on September 22, 2011, which was the 33<sup>rd</sup> and last day the appeal could be timely received.

<sup>2</sup> Even if the petitioner's appeal was timely, it would still be summarily dismissed. Counsel states only on Form I-290B that a, "Brief and/or additional evidence will be submitted to the AAO within 30 days." Counsel dated the appeal September 22, 2011. As of this date, more than 18 months later, the AAO has received nothing further, and the regulation requires that any brief shall be submitted directly to the AAO. 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii). As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Counsel here has not specifically addressed the reasons stated for denial in the Form I-290B and has not provided any additional evidence. She has not even expressed disagreement with the director's decision. The appeal must therefore be summarily dismissed.



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**ORDER:** The appeal is rejected.