



U.S. Citizenship
and Immigration
Services

(b)(6)

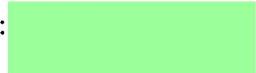


DATE:

MAR 18 2013

OFFICE: TEXAS SERVICE CENTER

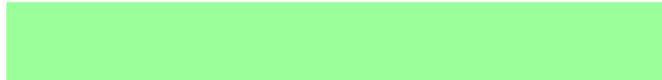
FILE:



IN RE:

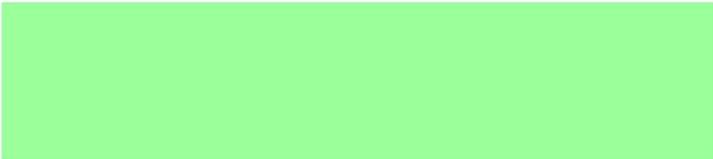
Petitioner:

Beneficiary:



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

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 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 September 19, 2011. The director properly gave notice to the petitioner that it had 33 days to file the appeal. Counsel filed the Form I-290B, Notice of Appeal or Motion, on October 26, 2011, or 37 days after the decision was issued. Accordingly, the appeal is untimely.

On appeal, counsel asserts that the decision was mailed to its wrong address and was finally received by counsel by mail on September 28, 2011. The record reflects that a copy of the director's decision was mailed to counsel at its previous address. Although the record fails to contain a change of address form completed by counsel, on appeal counsel provided a copy of an August 15, 2011 letter to U.S. Citizenship and Immigration Services notifying them of counsel's new address. Although the decision was mailed to counsel's incorrect address, it was not returned as undeliverable. Further, the decision was also mailed to the petitioner at its address of record. The record contains no change of address for the petitioner and the decision was not returned as undeliverable. The petitioner was given proper notice and failed to appeal in a timely manner.

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).

ORDER: The appeal is rejected.