

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:

MAY 17 2013

OFFICE: TEXAS 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,

A handwritten signature in black ink, appearing to be "Ron Rosenberg", written over a light blue rectangular background.

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) which was dismissed on February 29, 2012 and then appealed again on April 4, 2012. The appeal will be rejected both as untimely and not properly 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 Immigration and Naturalization Act (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.*

In the instant case, the AAO issued the decision dismissing the appeal of the petition on February 29, 2012. 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 April 4, 2012, or 35 days after the decision was issued. Accordingly, the appeal is untimely.

In addition, the instant appeal is improperly filed. On the Form I-290B, submitted on April 4, 2012, the petitioner checked Box B, which states, "I am filing an appeal. My Brief and/or additional evidence will be submitted to the AAO within 30 days. The AAO, however, does not exercise appellate jurisdiction over its own decisions. The AAO only exercises appellate jurisdiction over matters that were specifically listed at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). In this matter, the AAO would have had jurisdiction over a timely motion if the petitioner had checked Box D ("I am filing a motion to reopen a decision"), Box E ("I am filing a motion to reconsider a decision"), or Box F ("I am filing a motion to reopen and a motion to reconsider a decision") on the Form I-290B, Notice of Appeal or Motion. Additionally, counsel's brief makes no mention of requesting the AAO to consider the appeal as a motion to reconsider/reopen. Therefore, the appeal is improperly filed and must be rejected on this basis as well, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1) and 8 C.F.R. § 103.3(a)(2)(i).

Therefore, as the appeal was not properly or timely filed, it will be rejected.

ORDER: The appeal is rejected. The AAO's previous decision dated February 29, 2012 shall not be disturbed.