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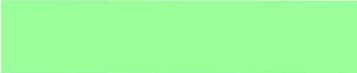
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **MAR 07 2013** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for U Nonimmigrant Classification for a Qualifying Family Member of a U-1 Recipient Pursuant to Section 101(a)(15)(U)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(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.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of her son. The petitioner's U nonimmigrant status petition (Form I-918) was granted and she has since adjusted to lawful permanent resident status. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the petition will remain denied.

The petitioner seeks nonimmigrant classification of her son under section 101(a)(15)(U)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(ii), as a qualifying family member of a U-1 nonimmigrant.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file 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). Regarding receipt dates for applications and petitions, the regulation at 8 C.F.R. § 103.2(a)(7)(i) provides, in pertinent part: "An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed." A benefit request which is rejected will not retain a filing date. *Id.*

The record indicates that the director issued the decision on September 22, 2011, and he properly gave notice to the petitioner that she had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

Counsel initially submitted the Notice of Appeal or Motion (Form I-290B) on October 25, 2011; however, the director rejected the appeal because it was not filed with the proper fee. The appeal was not received by the service center as properly filed until November 2, 2011, or 41 days after the decision was issued. Accordingly, the appeal was untimely filed and must be rejected. *See* 8 C.F.R. § 103.2(a)(7)(iii) (A benefit request that is rejected will not retain a filing date).

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 of the Vermont Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

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

ORDER: The appeal is rejected. The petition remains denied.