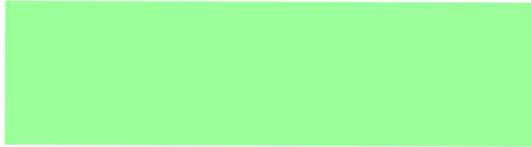
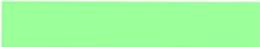


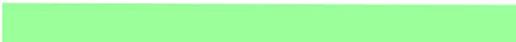


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 02 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Commonwealth of the Northern Mariana Islands (CNMI) Only Nonimmigrant Transitional Worker Classification Pursuant to 48 U.S.C. § 1806(d)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, 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 file the 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). A benefit request is considered received by U.S. Citizenship and Immigration Services (USCIS) as of the actual date of receipt at the location designated for filing such a request. *See* 8 C.F.R. § 103.2(a)(7)(i).

Further, an appeal must be properly completed and executed in accordance with the applicable regulations and/or the form instructions. *See* 8 C.F.R. § 103.2(b)(1). Rejected applications and petitions will not retain a filing date. *See* 8 C.F.R. § 103.2(a)(7)(i). Title 8 C.F.R. § 103.3(a)(2)(v)(B)(I) states in pertinent part that "[a]n appeal which is not timely filed within the time allowed must be rejected as improperly filed."¹

The record of proceeding indicates that the service center director issued the decision on Thursday, April 25, 2013. It is noted that the service center director properly gave notice to the petitioner of the timeframe to file the appeal. USCIS received the Form I-290B, Notice of Appeal or Motion, on Wednesday, June 19, 2013, which is 55 days after the decision was issued.

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 California Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.²

¹ The regulation is binding on USCIS in its administration of the Act, and it does not have the authority to extend the filing period. *See, e.g., Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission*, 613 F.2d 1120 (C.A.D.C., 1979) (an agency is bound by its own regulations); *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, (C.A.D.C., 1986) (an agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned).

² Furthermore, the AAO observes that the petitioner's statement on appeal does not identify any errors in the director's decision. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify *specifically* any erroneous conclusion of law or statement of fact for the appeal (emphasis added)." The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). In the instant case, although the petitioner requests that the petition be approved, the petitioner fails to identify specifically any erroneous conclusion of law or statement of fact as a basis for the appeal. Thus, even if the appeal were not rejected, the appeal would be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

(b)(6)

NON-PRECEDENT DECISION

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ORDER: The appeal is rejected.