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: JAN 2 4 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:

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the instant nonimmigrant visa petition. The petitioner submitted an appeal. After reviewing the submission, the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be dismissed.

The petitioner submitted a Petition for a CNMI-Only Nonimmigrant Transitional Worker (Form I-129CW) to the California Service Center on February 9, 2012. In the Form I-129CW visa petition, the petitioner describes itself as a spa, massage, nail and salon business established in 2006. In order to employ the beneficiary in what it designates as a general maintenance worker position, the petitioner seeks to classify her as a CNMI-Only Nonimmigrant Transitional Worker (CW-1) pursuant to 48 U.S.C. § 1806(d).

The director denied the petition on October 1, 2012. Thereafter, the petitioner submitted an appeal. The AAO reviewed the submission and dismissed the appeal on October 30, 2013.[1] In the AAO's decision dismissing the appeal, the AAO stated that "[a]ny motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision."

Thereafter, counsel for the petitioner submitted a Form I-290B, Notice of Appeal or Motion, and marked Box E of Part 2 to indicate that he was filing a motion to reconsider. The Form I-290B was received by U.S. Citizenship and Immigration Services (USCIS) on Tuesday, December 3, 2013, which is 34 days after the prior decision was issued. Accordingly, the motion was untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a motion to reconsider "must be filed within 30 days of the decision that the motion seeks to reconsider." If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

Failure to timely file a motion to reopen may be excused, at the discretion of USCIS, where the delay is reasonable and is demonstrated to be beyond the petitioner's control. 8 C.F.R. § 103.5(a)(1)(i). No such discretion may be exercised, however, with regard to a motion to reconsider. Accordingly, the motion to reconsider must be dismissed because it was untimely filed.

Furthermore, the AAO notes that the submission does not satisfy the requirements of a motion to reconsider. Specifically, the regulation at 8 C.F.R. § 103.5(a)(1) states the following:

> (iii) Filing Requirements—A motion shall be submitted on Form I-290B and may be accompanied by a brief. It must be:

---

[1] The AAO determined that the petitioner did not establish that the beneficiary was lawfully present in the CNMI at the time the petition was filed on February 9, 2012. The AAO noted that even assuming *arguendo* that the beneficiary had been issued a valid umbrella permit pursuant to the Attorney General's notice (which she was not), the permit would have been valid only until November 27, 2011. The CW-1 petition was filed on February 9, 2012 (over two months later). Thus, the beneficiary would not have been in lawful status at the time the petition was filed.

* * *

(C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;

In this matter, the submission constituting the motion does not contain a statement as to whether or not the unfavorable decision has been or is the subject of any judicial proceeding as required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Thus, the petitioner and counsel failed to comply with the requirements as set by the regulations for properly filing a motion. Accordingly, the motion must be dismissed for this reason also.

It should be noted for the record that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion to reconsider does not meet the applicable filing requirements as discussed above, it must be dismissed.

ORDER: The motion is dismissed.