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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

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[Redacted]

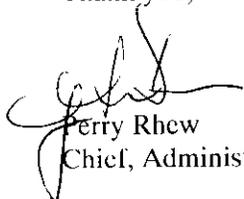
DATE: OFFICE: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: OCT 14 2011
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:
[Redacted]

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and 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 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. § 103.5a(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).

The director denied the instant petition on June 3, 2009 and properly gave the petitioner notice that it had 33 days during which to file the appeal. On July 2, 2009, counsel filed an improperly executed Form I-290B, Notice of Appeal or Motion, which the director rejected. Counsel did not file a properly executed Form I-290B until July 20, 2009, 47 days after the decision was issued. Accordingly, the appeal was untimely filed.

The record contains a letter from counsel dated September 25, 2009, in which she argues that the initial Form I-290B should not have been rejected. Although counsel conceded that the form had not been fully executed, she argued that her failure to provide the petitioner's address should not have been a ground for rejection. To the contrary, counsel argued that the appeal had been properly filed pursuant to 8 C.F.R. § 103.2(a)(7)(i), which states, in pertinent part, the following:

General. An application or petition received in a USCIS office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 or part 245a of this chapter, shall be regarded as properly filed when so stamped, if it is signed *and* executed *and* the required filing fee is attached or a waiver of the filing fee is granted. . . .

(emphasis added). According to counsel, her failure to execute the Form I-290B fully "is not, as per the above-cited regulation, grounds to return the filing as being improperly filed." Counsel noted in her letter that the petitioner signed the Form I-290B, that the required filing fee had been attached, and that USCIS had stamped the time and date of actual receipt on the form. As such, according to counsel's argument, the initial Form I-290B was properly filed pursuant to 8 C.F.R. § 103.2(a)(7)(i), and the director rejected it in error.

We disagree with counsel's analysis, as she has not considered the full language of the regulation she cites. Filing an application or petition that has been signed with the required filing fee is not sufficient to satisfy 8 C.F.R. § 103.2(a)(7)(i). As indicated, that regulation specifically requires that the form be *executed*, and counsel concedes in her letter that it was not fully executed. Accordingly, counsel's September 25, 2009 letter does not establish that initial Form I-290B was rejected in error.

Moreover, we note that 8 C.F.R. § 103.2(a)(1) states, in pertinent part, the following:

General. Every application, petition, appeal, motion, request, or other document submitted on any form prescribed by this chapter I, notwithstanding any other regulations to the contrary, *must* be filed with the location *and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations* in this chapter I requiring its submission. . . .

(emphasis in original). At Page 1, “General Instructions,” the Instructions to the Form I-290B¹ state, in pertinent part, the following:

Answer all questions fully and accurately. State that an item is not applicable with “N/A.” If the answer is none, write “None.”

As counsel did not fully execute the initial Form I-290B as instructed to do so by its instructions, her submission did not satisfy 8 C.F.R. § 103.2(a)(1).

For all of these reasons, counsel’s initial Form I-290B was properly rejected by the director. As noted, counsel’s second Form I-290B, which she did properly execute, was filed on July 20, 2009, 47 days after the decision was issued, and the appeal was therefore untimely filed.

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, which in this case was the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). In her August 11, 2009 decision, the director notified counsel that the untimely appeal did not meet the requirements of a motion to reopen or a motion to reconsider, and that the June 3, 2009 decision denying the petition would not be disturbed.

Although the director forwarded the matter to the AAO, we have no jurisdiction over this matter, as neither the Act nor the pertinent regulations grant us authority to extend the 33-day time limit. As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ The Instructions to the Form I-290B may be accessed online at the USCIS website at <http://www.uscis.gov/files/form/i-290binstr.pdf> (accessed October 6, 2011).