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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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Date: **SEP 07 2011** Office: VERMONT SERVICE CENTER FILE 

IN RE: Petitioner: 
Beneficiary:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the instant nonimmigrant visa petition. The director subsequently treated a late appeal as a motion. In reopening the matter, the director affirmed the previous decision and denied the visa petition again. In response to a second late appeal, the appeal was rejected as untimely, and the director found that the untimely appeal did not meet the requirements of a motion. In response to a third appeal, the director issued a request for evidence then, again, affirmed the previous decision and denied the visa petition. The matter is now before the Administrative Appeals Office (AAO) pursuant to a fourth 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 record indicates that the service center director issued its most recent decision on February 22, 2011. The director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The most recent Form I-290B was dated April 27, 2011, and it was not received by the director until Thursday, April 28, 2011, or 65 days after the decision was issued. Accordingly, the appeal was 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, 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.