



U.S. Citizenship
and Immigration
Services

D2

DATE **DEC 21 2012** OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

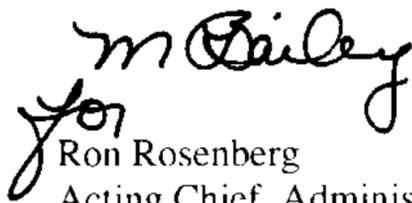
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the approval of the visa petition. The matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen and reconsider.

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. § 103.8(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).

The record indicates that the service center director issued the decision on December 28, 2010. It is noted that the service center director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Immigration and Nationality Act (the Act) nor the pertinent regulations grant the AAO authority to extend this time limit.

The Form I-290B was initially received by the service center on January 26, 2011. However, the Form I-290B was not properly filed and the director rejected the filing on January 31, 2011.¹

¹ The rejection notice states the following regarding the reason for the rejection:

Your application/petition is incomplete and/or, there appears to be missing pages. Please review your application for completeness. The original petition/application along with the relating supplement pages must be filled out completely in order to adjudicate your case. Please verify that you have signed your application with an original signature.

Further, the rejection notice provides instructions for notifying the director that a case has been rejected in error. Specifically, the rejection notice states the following:

If you believe that your case has been rejected in error, you may submit it along with an explanation to the following address:

Vermont Service Center
Attention: CRU Supervisor
Improperly Rejected
75 Lower Welden Street
St. Albans, VT 05479

The AAO notes that upon resubmission of the case, the petitioner and counsel did not assert that the Form I-290B "had been rejected in error." Counsel resubmitted the Form I-290B, supporting documents and fee to the Vermont Service Center for normal processing. Thus, it does not appear that the petitioner and counsel allege that the Form I-290B was improperly rejected. 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). An application or petition which is not properly signed shall be rejected as improperly filed. *See* 8 C.F.R. § 103.2(a)(7)(i). Rejected applications and petitions will not retain a filing date. *Id.*

Counsel resubmitted the appeal and it was received by the service center on Friday, February 4, 2011, which is 38 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 matter will therefore be returned to the director. If the director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

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

ORDER: The appeal is rejected.