

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE:

AUG 26 2013

OFFICE: CALIFORNIA SERVICE CENTER

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:

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 Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly 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. § 103.8(b). The date of filing is not the date of mailing, but the actual date of receipt at the designated filing location. *See* 8 C.F.R. § 103.2(a)(7)(i). Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The record indicates that the service center director issued a decision on January 11, 2013. It is noted that the service center director gave notice to the petitioner of the timeframe to file the appeal.

The Form I-290B, Notice of Appeal or Motion, was initially received by U.S. Citizenship and Immigration Services (USCIS) on Thursday, February 7, 2013. The director rejected the filing on February 11, 2013.¹ The petitioner resubmitted the appeal and it was received by USCIS on Tuesday, February 19, 2013, which is 39 days after the decision was issued. Accordingly, the appeal was untimely filed, and must be rejected on this basis.²

The AAO notes that even if the appeal had been timely filed, it would be summarily dismissed as the petitioner failed to state a valid basis for an appeal. On the Form I-290B, the petitioner checked Box A in Part 2 of the form to indicate that it was filing an appeal and that a brief and/or additional evidence was attached. The AAO fully and in-detail reviewed the Form I-290B and the petitioner's written statements in support of the appeal. In the box on the Form I-290B at Part 3, the petitioner states, "[The beneficiary] wishes to appeal the decision made regarding his H-1B visa application. The

¹ The appeal was due within 33 days of service of the unfavorable decision, which was Wednesday, February 13, 2013. The Form I-290B was received on February 7, 2013. However, USCIS rejected the submission, stating, in part, "The application/petition has not been fully completed. One or more of the following field(s) were not completed: - Part 2- Information about Appeal or Motion." The AAO notes that rejected petitions will not retain a filing date. *See* 8 C.F.R. § 103.2(a)(7)(i).

The AAO notes that upon resubmission of the case, the petitioner did not assert that the Form I-290B had been rejected in error. The petitioner resubmitted the Form I-290B, supporting documents and fee to USCIS, but there is no evidence that the petitioner alleged 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).

² Title 8 C.F.R. § 103.3(a)(2)(v)(B)(1) states in pertinent part that "[a]n appeal which is not timely filed within the time allowed must be rejected as improperly filed." 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).

brief with supporting reasons is listed on [a] separate written statement. All of the evidence [is] hereby submitted. We hope this additional information will allow the Service Center to adjudicate the request favorably." In an accompanying written statement, the petitioner describes the beneficiary's skills and qualifications, as well as selected duties of the proffered position. In a separate document, entitled "Letter of Recommendation for [the beneficiary]," the petitioner briefly describes the beneficiary's positions with the company and commends the beneficiary's work. The petitioner did 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." In the instant case, the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact by the director as a basis for the appeal and, therefore, if the appeal had been timely filed, it would have been summarily dismissed.

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.

ORDER: The appeal is rejected.