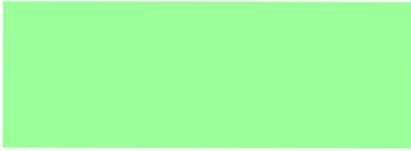


(b)(6)

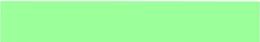
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

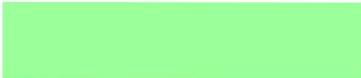
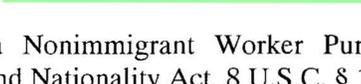


U.S. Citizenship
and Immigration
Services



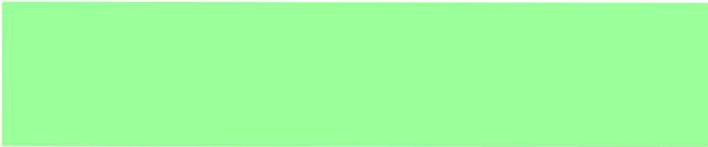
DATE: **AUG 27 2013**

OFFICE: CALIFORNIA 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:

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 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. § 103.8(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 November 17, 2012. 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 Monday, December 17, 2012. The director rejected the filing on January 2, 2013.¹ The petitioner resubmitted the appeal and it was received by USCIS on Monday, January 7, 2013, which was 51 days after the decision was issued. Accordingly, the appeal was untimely filed, and must be rejected on this basis.²

¹ The appeal was due within 33 days of service of the unfavorable decision, which was Thursday, December 20, 2013. The Form I-290B was received on December 17, 2013. However, USCIS rejected the submission, stating, in part, "The check amount is incorrect or has not been provided." The AAO notes that a benefit request which is not submitted with the correct fee will be rejected and will not retain a filing date. *See* 8 C.F.R. § 103.2(a)(7). There is no appeal from such rejection. *Id.*

The AAO notes that USCIS rejected the initial submission on January 2, 2013. The AAO observes that even if USCIS had immediately rejected the submission upon receipt on December 17, 2012, the rejection could not realistically have reached the petitioner and been returned to USCIS within the three remaining days of the appeal period.

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).

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.