



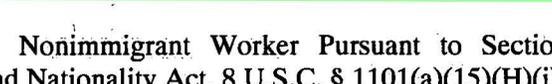
**U.S. Citizenship
and Immigration
Services**

(b)(6)



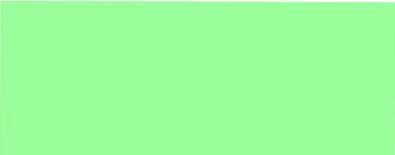
DATE: **DEC 06 2013**

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)

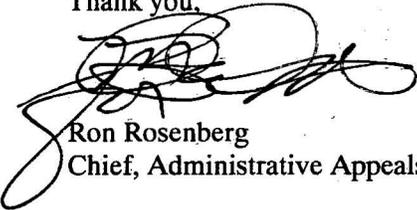
ON BEHALF OF PETITIONER:



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.



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO). 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). A benefit request will be considered received by U.S. Citizenship and Immigration Services (USCIS) as of the actual date of receipt at the location designated for filing such a request. *See* 8 C.F.R. § 103.2(a)(7)(i). A submission which is rejected will not retain a filing date, and there is no appeal from such rejection. 8 C.F.R. § 103.3(a)(2)(iii).

The record of proceeding indicates that the service center director issued the decision on Friday, May 17, 2013. The service center director gave notice to the petitioner of the timeframe to file the appeal, and that the petitioner should not file an appeal directly with the AAO (stating in the decision, "**The appeal may not be filed directly with the AAO** (emphasis in the original)."¹ The Form I-290B (Notice of Appeal or Motion) was received by the service center on Wednesday, June 26, 2013, which is 40 days after the service center director's decision was issued. Accordingly, the appeal was untimely filed. Neither the Act nor the pertinent regulations grant the AAO the authority to extend this time limit.

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.

¹ In an undated letter submitted with the appeal, counsel references a section of the Adjudicator's Field Manual (AFM). However, the section of the AFM referenced by counsel is entitled "Receiving of Applications and Petitions at Service Centers," and discusses the procedural steps taken at USCIS service centers, not at the AAO. Thus, in the instant case, counsel's reliance on the AFM is misplaced.