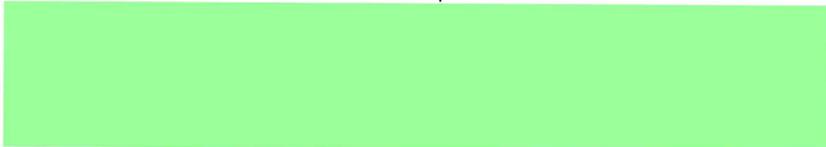
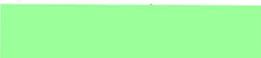


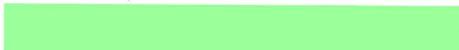


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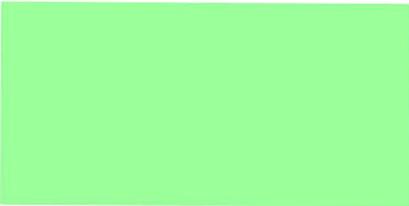


DATE: **FEB 25 2013** OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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 IN THE FORM I-129 PROCEEDING:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director 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. 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 filing date is not the date the submission is mailed, 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 June 8, 2012. The AAO observes 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 nor the pertinent regulations grant the AAO authority to extend this time limit.

Counsel (for the petitioner in the Form I-129 proceeding) submitted a Form I-290B dated July 10, 2012. The appeal was not received by the service center until Thursday, July 12, 2012.¹ Thus, the appeal was received 34 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).

¹ Every benefit request submitted to USCIS must be executed and filed in accordance with the form instructions, and such instructions are incorporated into the regulations requiring its submission. See 8 C.F.R. § 103.2(a)(1). An appeal must be properly completed and executed in accordance with the applicable regulations and other USCIS instructions. 8 C.F.R. § 103.2(b)(1). A benefit request will be considered received by USCIS as of the actual date of receipt at the location designated for filing such benefit request (in this case the lockbox address in Phoenix, Arizona, as stated in the Form I-290B instructions and in the director's decision). *Id.* Moreover, a benefit request which is not signed and submitted with the correct fee(s) will be rejected. See 8 C.F.R. § 103.2(a)(7)(i).

The AAO observes that counsel submitted a facsimile of the Form I-290B to the Vermont Service Center Premium Processing Unit on July 11, 2012. The submission was not sent to the location designated for filing such benefit requests and did not include the filing fee. In the instant case, to be timely, the appeal must have been properly received by Wednesday, July 11, 2012. However, the appeal was not properly received by USCIS until July 12, 2012, which is 34 days after the director issued the decision. It is noted that neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for the submission of an appeal.

(b)(6)

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.