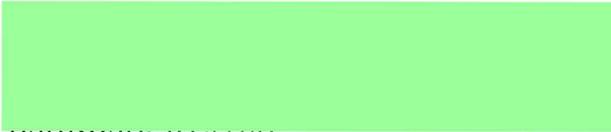




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 25 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiaries:

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 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,

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The service center director (the director) denied the nonimmigrant visa petition, and 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 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 director denied the instant petition on April 9, 2012, and she properly gave the petitioner notice that it had 30 days during which to file an appeal. However, the petitioner did not file the appeal until May 16, 2012, 37 days after the decision was issued.¹ Accordingly, the appeal was untimely filed. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit. As the appeal was untimely filed, the appeal must be rejected.

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 such a motion is the official who made the last decision in the proceeding, which in this case is the director of the California 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.

¹ The first page of the director's April 9, 2012 decision denying the petition contained the following instructions:

If you desire to appeal this decision, you may do so. Your notice of appeal must be filed with this office [(the California Service Center)] within 30 days of this notice. . . .

* * *

The appeal may not be filed directly with the AAO.

(Emphasis in original.)

Despite these clear instructions not to do so, the petitioner nonetheless attempted to file the appeal directly with the AAO. However, the AAO neither accepts nor is authorized to accept the filing of an appeal; and the petitioner's submission was consequently rejected by the AAO. The petitioner did not file the appeal with the California Service Center until May 16, 2012.