



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE **JUL 15 2013**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

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 approval of the visa petition. The matter is 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 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 record indicates that the service center director issued the decision on July 31, 2012. It is noted that the service center director properly gave notice to the petitioner that of the timeframe to file the appeal. Neither the Immigration and Nationality Act (the Act) nor the pertinent regulations grant the AAO authority to extend this time limit.

The Form I-290B was received on Tuesday, November 8, 2012, which is 100 days after the decision was issued. Accordingly, the appeal was untimely filed.<sup>1</sup>

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 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.<sup>2</sup>

As the appeal was untimely filed, the appeal must be rejected.

**ORDER:** The appeal is rejected.

---

<sup>1</sup> On the Form I-290B, counsel claims that counsel and "the petitioner or this office did not receive the denial decision letter from the USCIS until recently" and requests to the AAO "extend the time for appeal." However, as noted, the AAO does not have the authority to extend the time limit for an appeal. Further, the AAO does not have jurisdiction over an untimely filed appeal.

<sup>2</sup> The AAO notes that counsel checked Box A in Part 2 of the Form I-290B to indicate that he was filing an appeal and that a brief and/or additional evidence will be submitted within 30 days. The AAO reviewed the entire record of proceeding and finds that the petitioner and counsel did not provide a brief and/or additional evidence. Accordingly, the record of proceeding is deemed complete as currently constituted.