



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JUL 16 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:

[REDACTED]

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). The Form I-290B, Notice of Appeal or Motion, will be rejected.

The petitioner submitted a Form I-129, Petition for Nonimmigrant Worker, to the California Service Center on June 8, 2012. On the Form I-129 visa petition, the petitioner describes itself as a motion picture consulting business established in 2011. In order to employ the beneficiary in what it designates as a set and exhibit designer position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on November 17, 2012, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Counsel for the petitioner submitted the Form I-290B, Notice of Appeal or Motion, on December 20, 2012. Thereafter, the director returned the Form I-290B to counsel along with a rejection notice. Counsel resubmitted the Form I-290B and supporting documents to U.S. Citizenship and Immigration Services (USCIS). Once more, the director returned the Form I-290B to counsel along with a rejection notice. Counsel resubmitted the Form I-290B and supporting documents to USCIS on Wednesday, January 23, 2013, which is 67 days after the director's decision denying the petition was issued. Accordingly, the appeal was untimely filed.¹

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.

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

ORDER: The appeal is rejected.

¹ Counsel requests that the AAO *sua sponte* reopen the proceeding to make a new decision favorable to the petitioner. The AAO reviewed counsel's request and finds that the record of proceeding does not warrant a reopening *sua sponte*.