

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

DATE: **JUL 22 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,

Michael T. Keely
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.

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 November 10, 2012. The AAO observes that the service center director properly gave notice to the petitioner that it had 30 days to file the appeal. Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The petitioner dated the Form I-290B April 19, 2013, but the appeal was not received by U.S. Citizenship and Immigration Services until Friday, April 26, 2013. Thus, the appeal was not received in proper form for filing until 167 days after the decision 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 In its review, the AAO considered all of the facts and documents provided by the petitioner with regard to the late filing. In this regard, however, the petitioner should note that the notice of the denial decision itself informed the petitioner that an appeal had to be filed on a Form I-290B, and not on the Board of Immigration Appeals (BIA) form that the petitioner initially used – and that was correctly rejected by U.S. Citizenship and Immigration Services (USCIS). Also, the petitioner should note that the notice of the denial decision also instructed the petitioner to file an appeal at the USCIS address at the top of the first page of that form – and not at the BIA address where the petitioner states that it initially sent the BIA appeal form.