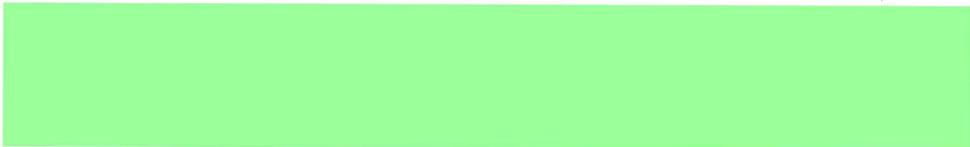


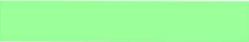


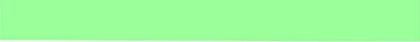
U.S. Citizenship
and Immigration
Services

(b)(6)



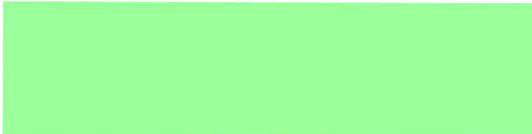
DATE: **MAR 04 2013**

OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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:

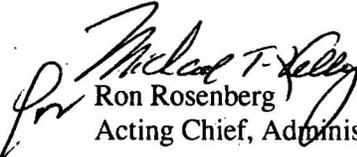


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. Upon consideration of a joint motion to reopen and reconsider its decision, the AAO dismissed the motion and reaffirmed its initial decision. The matter is now again before the AAO pursuant to a joint motion to reopen and reconsider. The joint motion will be dismissed as untimely filed.

The record indicates that the AAO issued the decision dismissing the joint motion to reopen and reconsider its decision on June 27, 2012. The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that the affected party, if it desires to file a motion to reconsider or reopen, must file that motion within 30 days of the decision the motion seeks to have reconsidered or reopened. If the decision was mailed, the motion must be filed within 33 days. See 8 C.F.R. § 103.5a(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).

As noted above, the record indicates that the AAO issued the decision dismissing the joint motion on June 27, 2012. The petitioner submitted the instant joint motion to the California Service Center, where it was not received until Thursday, August 9, 2012, when it was accepted for filing and was issued a receipt number. Thus, the motion was not filed until 43 days after the decision that is the subject of the motion.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that the affected party, if it desires to file a motion to reconsider or reopen, must file that motion within 30 days of the decision that the motion addresses. If the decision was mailed, the motion must be filed within 33 days. See 8 C.F.R. § 103.5a(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).

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing a motion to reconsider.

The regulations do permit U.S. Citizenship and Immigration Services (USCIS), in its discretion, to excuse the untimely filing of the motion to reopen component of this joint motion were it demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i). Upon review, however, the AAO does not find that the untimely filing of the motion in this matter was either reasonable or beyond the control of the petitioner.

It should be noted for the record that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

As the motion was untimely filed, it must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4) for failure to meet applicable filing requirements.

ORDER: The motion is dismissed.