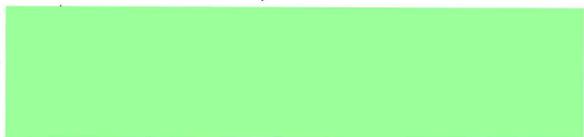


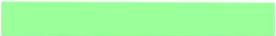
(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: MAR 07 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:

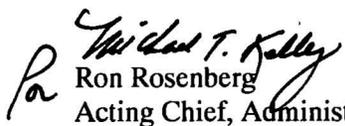
SELF-REPRESENTED

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.

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 Director, California Service Center denied the instant nonimmigrant visa petition. The Chief, Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO pursuant to a motion to reconsider. The motion will be dismissed as untimely filed.

The record indicates that the AAO issued the decision dismissing the appeal on September 20, 2011. 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).

The motion must be submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction. 8 C.F.R. § 103.5(a)(1)(iii)(E). The instructions on page one of the decision of the AAO correctly informed the petitioner of this fact, stating in part:

All motions must be submitted to the office that originally decided your case by filing a Form I-290B, notice of appeal or motion with a fee of \$630.

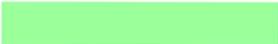
Those instructions indicated that, consistent with the regulations, the petitioner should submit any motion in this matter to the California Service Center. The instructions also correctly noted the time available for such a filing as per 8 C.F.R. § 103.5(a)(1)(i).

The record indicates that the AAO issued the decision dismissing the appeal on September 20, 2011. The petitioner, however, mistakenly submitted the instant motion to the AAO, rather than to the California Service Center. The motion was received at the AAO on October 20, 2011. Of course, the AAO, correctly, refused to accept the motion for filing, and the AAO returned it to the petitioner, under cover of a letter that reiterated that the motion must be filed with the California Service Center. The petitioner then forwarded the motion to the California Service Center, where it was not received until November 9, 2011, when it was accepted for filing and issued a receipt number. Thus, the motion was not filed until 50 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. 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.

As the motion was untimely filed, the motion must be dismissed.



(b)(6)

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ORDER: The motion is dismissed.