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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



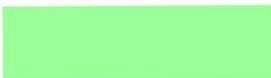
U.S. Citizenship
and Immigration
Services



Date: **MAY 20 2013**

Office: VERMONT SERVICE CENTER

FILE:

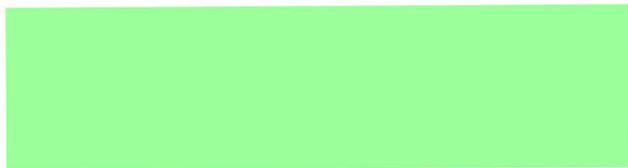


IN RE: Petitioner:
Beneficiary:



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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a small mark below it.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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DISCUSSION: The Director, Vermont Service Center, revoked the approval of the instant nonimmigrant visa petition, and 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 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 an appeal.

The record indicates that the director issued the decision on January 20, 2012. The director properly gave notice to the petitioner that it had 33 days to file the appeal. Counsel for the petitioner attempted to file an appeal by submitting the Form I-290B on Saturday, February 23, 2012, 34 days after the decision was issued. In addition to being untimely, counsel did not include the correct fee with that appeal form.

On March 1, 2012, U.S. Citizenship and Immigration Services (USCIS) rejected and returned that appeal, observing that it had not been filed with the correct fee. The petitioner then filed an appeal with USCIS on Wednesday, March 7, 2012, 47 days after the decision was mailed. The appeal was not timely filed and must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(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 Vermont 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.