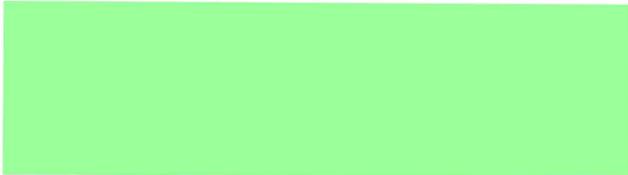


(b)(6)

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

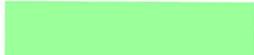


U.S. Citizenship
and Immigration
Services

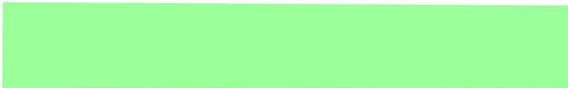


DATE: **MAY 24 2013**

OFFICE: VERMONT SERVICE CENTER

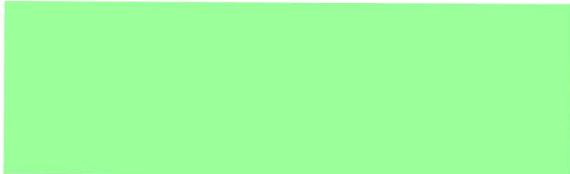
FILE: 

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)

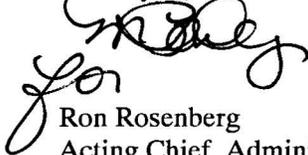
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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,


for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the approval of the visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen and reconsider.

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).

The record indicates that the service center director issued the decision on Tuesday, October 30, 2012. It is noted that the service center director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Immigration and Nationality Act (the Act) nor the pertinent regulations grant the AAO authority to extend this time limit.

The Form I-290B was initially received by U.S. Citizenship and Immigration Services (USCIS) on November 30, 2012. However, the petitioner did not submit the appropriate fees and the submission was rejected on Friday, December 12, 2012.¹ Counsel resubmitted the appeal and it was received by USCIS on Tuesday, December 18, 2012, which is 49 days after the decision was issued.² Accordingly, the appeal was untimely filed.

¹ The Form I-290B was received on Friday, November 30, 2012. The appeal was due within 33 days of service of the unfavorable decision, which was December 2, 2012. The AAO notes that December 2, 2012 was a Sunday; therefore, the AAO finds that the actual due date was December 3, 2012 (Monday) in accordance with 8 C.F.R. §1.2. Consequently, even if the director had immediately rejected the Form I-290B, it does not appear that the submission could have reached the petitioner and have been resubmitted to the director prior to the due date.

The AAO notes that upon resubmission of the case, the petitioner and counsel did not assert that the Form I-290B had been rejected in error. Counsel resubmitted the Form I-290B, supporting documents and fee to USCIS, but there is no evidence that counsel alleged that the Form I-290B was improperly rejected. An appeal must be properly completed and executed in accordance with the applicable regulations and/or the form instructions. *See* 8 C.F.R. § 103.2(b)(1). Rejected applications and petitions will not retain a filing date. *See* 8 C.F.R. § 103.2(a)(7)(i).

² Title 8 C.F.R. § 103.3(a)(2)(v)(B)(I) states in pertinent part that "[a]n appeal which is not timely filed within the time allowed must be rejected as improperly filed." The regulation is binding on USCIS in its administration of the Act, and it does not have the authority to extend the filing period. *See, e.g., Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission*, 613 F.2d 1120 (C.A.D.C., 1979) (an agency is bound by its own regulations); *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, (C.A.D.C., 1986) (an agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned).

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.