



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAY 31 2013** OFFICE: VERMONT 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)

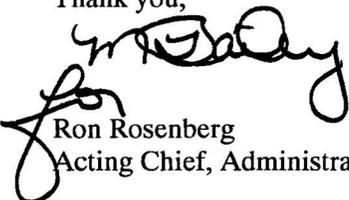
ON BEHALF OF PETITIONER:

[Redacted]

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,


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. 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 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 January 5, 2012. The AAO observes 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 nor the pertinent regulations grant the AAO authority to extend this time limit.

The Form I-290B was initially received by the service center on February 7, 2012. However, the petitioner did not submit the appropriate fees (specifically, the notice states that "the check amount is incorrect, or has not been provided"). The director rejected the filing on February 14, 2012.¹ Counsel resubmitted the appeal and it was received by U.S. Citizenship and Immigration Services (USCIS) on Tuesday, February 21, 2012, which is 47 days after the decision was issued. Accordingly, the appeal was untimely filed.²

¹ The appeal was due within 33 days of service of the unfavorable decision, which was February 7, 2012. The Form I-290B was received on February 7, 2012. However, USCIS rejected the submission, stating "[t]he check amount is incorrect, or has not been provided." The AAO notes that rejected petitions will not retain a filing date. *See* 8 C.F.R. § 103.2(a)(7)(i).

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). Moreover, 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 prior to the due date.

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).

(b)(6)

Page 3

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.