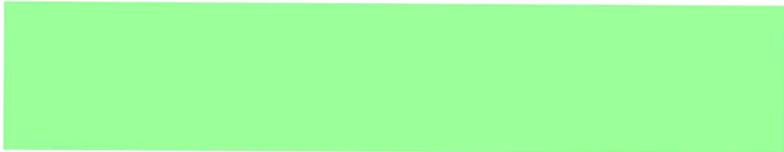
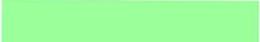




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **SEP 04 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

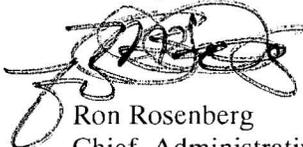
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,



Ron Rosenberg
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.

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 Wednesday, May 8, 2013. It is noted that the service center director properly gave notice to the petitioner of the timeframe 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, Notice of Appeal or Motion, was initially received by U.S. Citizenship and Immigration Services (USCIS) on June 4, 2013. However, it had not been properly completed and USCIS rejected the submission.¹ Thereafter, counsel resubmitted the appeal and it was received by USCIS on Wednesday, June 19, 2013, which is 42 days after the decision was issued.² Accordingly, the appeal was untimely filed.

¹ In the cover letter dated June 13, 2013, counsel states "[o]n June 7, 2013, USCIS returned the filing in error," but he does not provide further explanation. The AAO notes that when the Form I-290B, Notice of Appeal or Motion, was initially submitted, U.S. Citizenship and Immigration Services scanned the documents and placed a code at the bottom of each page. Thereafter, the submission was rejected because the Form I-290B was not fully completed, specifically Part 2 – Information about Appeal or Motion (on page 1). The petitioner and counsel resubmitted the appeal and supporting documents, but notably, the submission contains a new page 1 for the Form I-290B. It is not the page that was originally submitted; it has been replaced with a revised page 1.

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). There is no appeal from such rejection. *Id.* Counsel has not established that the submission was rejected in error and the record of proceeding does not support his assertion.

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 California Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.