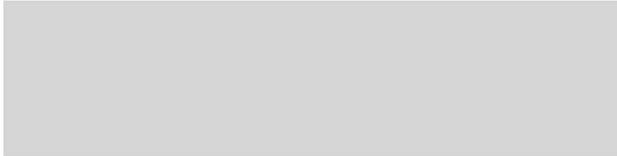


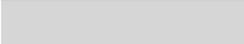
(b)(6)

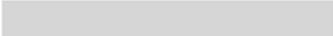
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

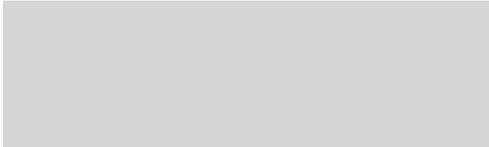


DATE: **APR 09 2015** OFFICE: VERMONT SERVICE CENTER FILE: 

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 (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.

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a circular stamp or mark.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now before this office 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 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). A benefit request will be considered received by U.S. Citizenship and Immigration Services (USCIS) as of the actual date of receipt at the location designated for filing such a request. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record of proceeding indicates that the service center director issued the decision on Wednesday, July 23, 2014. It is noted that the service center director properly gave notice to the petitioner of the timeframe to file the appeal. The Form I-290B, Notice of Appeal or Motion, was received by USCIS on Tuesday, August 26, 2014, which is 34 days after the decision was issued. Accordingly, the appeal was untimely filed. Neither the Act nor the pertinent regulations grant this office the authority to extend this time limit.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. Any further inquiry must be made to that office.

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

ORDER: The appeal is rejected.

¹ The regulations state that an appeal which is not timely filed must be rejected as improperly filed and that, in such a case, any filing fee that USCIS has accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The regulations are 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 (D.C. Cir. 1979) (an agency is bound by its own regulations); *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, (D.C. Cir. 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).