

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



D7

Date: DEC 21 2012

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

Petitioner: 

Beneficiary:

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

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 Director, California Service Center, 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.

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. 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the actual receipt of receipt at the designated filing location. 8 C.F.R. § 103.2(a)(7)(i). For calculating the date of filing, the appeal shall be regarded as properly filed on the date that its receipt was recorded by USCIS. A benefit request which is rejected will not retain a filing date. 8 C.F.R. § 103.2(a)(7)(iii).

The record indicates that the service center director issued the decision on September 30, 2011. It is noted that the service center director properly gave notice to the petitioner that it had 33 days to file the appeal and provided adequate instructions for filing the appeal in the decision.

On October 15, 2011, the petitioner submitted a letter to the AAO requesting a 60-day extension to file the appeal. On November 4, 2011, the petitioner submitted a letter to the service center director again, requesting a 60-day extension to file the appeal.

The AAO notes that the petitioner initially submitted the Form I-290B, Notice of Appeal or Motion, directly to the AAO, and not to the California Service Center, contrary to the instructions on the service center director's decision. The AAO returned the appeal to the petitioner, advising again that the appeal must be filed with the USCIS office that issued the original decision. The petitioner properly filed the appeal with the service center on January 12, 2012, 104 days after the director's decision was issued, and its receipt was recorded on that date.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected.

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.

The AAO notes for the record that even if the appeal had been properly filed, it would be summarily dismissed.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that an officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On appeal, the petitioner marked the box at part two of the Form I-290B to indicate that a brief and/or additional evidence would be submitted to the AAO within 30 days. The record indicates that the petitioner did not file a brief or supplemental evidence within the allowed timeframe. On the Form I-290B, the petitioner simply states that the company's CPA made an error on the IRS tax documents and has filed amendments; the petitioner has not identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is rejected.