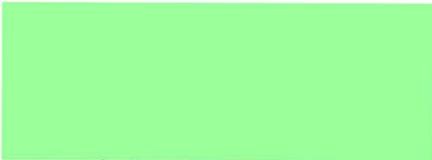




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 14 2013**

Office: VERMONT 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, Vermont 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 U.S. Citizenship and Immigration Services (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 November 25, 2011. 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 Act nor the pertinent regulations grant the AAO authority to extend this time limit.

Although the Form I-290B is dated January 31, 2012, it was not received by the service center until February 6, 2012, or 73 days after the decision was issued.¹ Accordingly, the appeal was untimely filed.

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 director declined to treat the appeal as a motion and forwarded the matter to the AAO.²

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

ORDER: The appeal is rejected.

¹ The AAO notes that the Vermont Service Center initially rejected the Form I-290B because it was not properly completed by the petitioner and/or because it was not accompanied by the correct filing fee. The petitioner re-submitted the properly completed Form I-290B and filing fee on February 6, 2012.

² On June 12, 2012, the director improperly issued a decision finding that the late appeal did not meet the requirements of a motion to reopen or motion to reconsider, and advised the petitioner that the decision to dismiss the motion would be "certified" to the AAO. However, once the director declines to treat the appeal as a motion to reopen or reconsider, the regulations state that the director "shall promptly forward the appeal and related record of proceeding to the [AAO]." 8 C.F.R. § 103.3(a)(2)(iv). Accordingly, once the director determined that the late appeal did not meet the requirements of a motion, the appeal should have been forwarded to the AAO without further action or comment from the director. The director's decision dated June 12, 2012 is withdrawn.