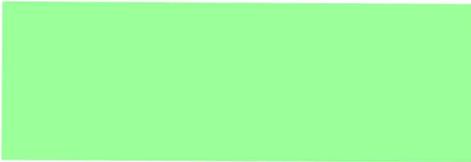


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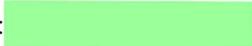
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave. N.W., MS 2090  
Washington, DC 20529-2090

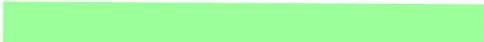


U.S. Citizenship  
and Immigration  
Services



Date: **MAR 19 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 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 May 1, 2012. 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.

The AAO notes that the petitioner initially submitted the Form I-290B, Notice of Appeal or Motion, to the Vermont Service Center on May 21, 2012; however, the service center rejected the Form I-290B because the appeal was not accompanied by a check for the filing fee of \$630.00. The petitioner properly filed the appeal with the service center on June 8, 2012, 38 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 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.

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

Additionally, the AAO notes for the record that even if the appeal had been timely filed, it appears that the petitioning business in this matter is not currently in good standing in the state of Texas.<sup>1</sup> If the petitioning business is no longer an active business, the petition will have become moot. The petitioner's inactive corporate status raise serious questions about whether it continues to exist as an importing employer, whether the petitioner

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<sup>1</sup> *See* Website of Texas Secretary of State, Comptroller of Public Accounts, <https://ourcpa.cpa.state.tx.us/coa/Index.html> (last accessed on March 13, 2003, copy incorporated into the record).

(b)(6)

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maintains a qualifying relationship, and whether it is authorized to conduct business in a regular and systematic manner. *See* section 214(c)(1) of the Act; *see also* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (l)(3).

**ORDER:** The appeal is rejected.