



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF O-M-O-

DATE: OCT. 14, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a petroleum engineer, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the immigrant visa petition. We dismissed a subsequent appeal. The Petitioner filed motions to reopen and reconsider which were also dismissed. The matter is now before us on motion to reconsider. The motion will be denied.

In order to properly file a motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the petitioner must file the motion within 30 days of the decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The regulation at 8 C.F.R. § 1.2 explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

The record indicates that we issued our latest decision on May 8, 2015. We properly gave notice to the Petitioner that he had 33 days to file a motion. The Notice of Appeal or Motion (Form I-290B) was received by U.S. Citizenship and Immigration Services (USCIS) on Thursday, June 11, 2015, or 34 days after the decision was issued. Accordingly, the motion to reconsider was untimely filed.

On motion, the Petitioner cites the regulation at 8 C.F.R. § 103.8(b) and asserts that his Form I-290B was timely filed because “[s]ervice by mail is complete upon mailing.” The regulation at 8 C.F.R. § 103.8 concerns “authorized means of service by the Service on parties and on attorneys” and not submissions from applicants, petitioners, or their attorneys to USCIS. In this matter, the date of filing is not the date the Form I-290B was mailed by the Petitioner, but the date of actual receipt at the designated location with the proper signature and the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i). Accordingly, as the motion was not received within 33 days of our latest decision, the motion was untimely filed and must be denied. In addition, the instant motion does not contain the statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding as required by the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C).

The regulation at 8 C.F.R. § 103.5(a)(4) states that “[a] motion that does not meet applicable requirements shall be dismissed.” Accordingly, the motion will be denied and our previous decisions will not be disturbed.

Matter of O-M-O-

ORDER: The motion to reconsider is denied.

Cite as *Matter of O-M-O-*, ID# 14808 (AAO Oct. 14, 2015)