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U.S. Citizenship
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FILE:

[REDACTED]
EAC 05 208 53461

Office: VERMONT SERVICE CENTER

Date: JAN 17 2008

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

3 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) determined that the appeal was not filed by anyone with standing in the matter. The AAO rejected the appeal without rendering a decision. The petitioner filed a motion to reopen. The AAO rejected the motion without rendering a decision. The matter is now before the AAO on a subsequent motion to reopen. The motion will be rejected.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1 153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

The appeal was filed by [REDACTED], who submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the petitioner. On the Form G-28, [REDACTED] indicated that he was a “case manager.” Pursuant to the regulations at 8 C.F.R. § 292.1(a), 8 C.F.R. § 103.3(a)(1)(iii) and 8 C.F.R. § 103.2(a)(2)(v), the AAO determined that the appeal had not been filed by the petitioner, nor by any entity with legal standing in the proceeding. Therefore, the AAO concluded that the appeal had not been properly filed, and it was rejected.

On August 30, 2006, counsel for petitioner filed a motion seeking to reopen the appeal that was rejected, asserting that while improperly filed, the rejected appeal was timely. As the appeal was rejected by the AAO as improperly filed, there was no decision on the part of the AAO to be reopened. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). Because the disputed decision was rendered by the director, the AAO rejected the motion for lack of jurisdiction. Moreover, the motion was untimely. The regulation at 8 C.F.R. § 103.5(a)(1)(i), states that a motion must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. The regulation at 8 C.F.R. § 103.a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. In this matter, the AAO mailed its decision rejecting the appeal to the petitioner on April 24, 2006. Counsel dated his motion May 11, 2006, but the motion was not properly received by the Service Center until August 30, 2006. The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a late motion may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. The petitioner failed to establish that the delay was either reasonable or beyond his control. On November 21, 2006, the AAO issued a decision rejecting the motion.

Counsel for petitioner has now filed a subsequent motion seeking a review of the director’s November 22, 2005 decision. Although counsel notes that the petitioner was not assisted by an attorney but by an agent, there is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff’d*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). The director declined to consider the untimely motion and forwarded the matter to the AAO. As the previous motion and appeal were rejected by the AAO, there is no decision on the part of the AAO that may be reopened in this proceeding.

According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO has not entered a decision in this matter. Because the disputed decision was rendered by the director, the AAO has no jurisdiction over the latest motion and it must be rejected.

ORDER: The motion is rejected.