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*BP*

U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE:



Office: VERMONT SERVICE CENTER

Date: APR 21 2004

IN RE:

Petitioner:



Beneficiary:

PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER: N/A

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner filed the I-140 for the beneficiary on March 11, 2002 and the director denied the petition on January 10, 2003. An I-290B Notice of Appeal was initially submitted on February 12, 2003. The notice of appeal was rejected by the director and returned to the petitioner with a notice dated February 18, 2003 stating that the notice of appeal had not been properly signed. The notice of appeal was resubmitted on March 4, 2003.

The name of the person filing the appeal is stated on the Form I-290B as the Latin American Assistance Corp. No name of any individual from that organization appears on the Form I-290B. The signature on the Form I-290B is illegible, but it appears to match the signature of the person who submitted Form G-28 entries of appearance as the purported representative of the petitioner and of the beneficiary. The Form I-290B states that the Latin American Assistance Corporation represents the beneficiary.

The G-28 forms in the record make no claim that the purported representative is an attorney or an accredited representative. One G-28 is dated January 29, 2002, and is submitted on behalf of the petitioner. Two other G-28's are dated August 30, 2002 and February 11, 2003 respectively, and are submitted on behalf of the beneficiary. On each G-28 the first three categories of representation are left blank and under category 4 for "Other" each of the G-28 states,

I am an officer of Latin America Assistance Corporation, a corporation recognized by the laws of Virginia to assist people, who are not fluent in English. Therefore, I would like to receive any notice or response regarding this case.

The name of the purported representative is the same on each of the three G-28's. That name does not appear on the most current list of accredited representatives published on the Internet web site of the Executive Office of Immigration Review and dated January 5, 2004. Nor does the statement in category 4 of the G-28's satisfy the requirements in 8 C.F.R. § 292.1 for a person who is neither an attorney nor an accredited representative to serve as a representative. Therefore, the purported representative is not authorized to represent any party to this case.

The regulations contain several provisions relating to the proper filing of appeals as follows.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states:

*Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. . . .

The regulation at 8 C.F.R. § 103.2(a)(3) states:

*Representation* An applicant or petitioner may be represented by an attorney . . . , as defined, . . . or by an accredited representative as defined in [8 C.F.R. 292.1(a)(4)]. . . . Where a notice of representation is submitted that is not properly signed, the application or petition will be processed as if the notice had not been submitted.

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

*Improperly filed appeal—(A). Appeal filed by person or entity not entitled to file it-- (1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee [that CIS] has accepted will not be refunded.

Finally, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) provides:

*Appeal by attorney or representative without proper Form G-28—(i) General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee [CIS] has accepted will not be refunded regardless of the action taken.

In the instant case, the notice of appeal and the G-28's in the record fail to conform to the above provisions. The beneficiary lacks legal standing to appeal the petition and no evidence indicates that the purported representative is authorized to act as a representative in any capacity. Therefore, the appeal has not been properly filed and must be rejected.

Moreover, even if the notice of appeal had been properly filed by a representative recognized by the regulations and had been filed on behalf of the petitioner, the notice of appeal would be rejected as untimely.

Appeals must be made within 30 days of the service of the notice of decision, plus three days when the notice of the decision is by mail. See 8 C.F.R. § 103.3(a)(2)(i); 8 C.F.R. § 103.5a(b).

The notice of appeal bears a date stamp by the Vermont Service Center showing initial receipt on February 12, 2003. That date was the final day of the appeal period of the January 10, 2003 decision of the director. The second date stamp on the notice of appeal of March 4, 2003 showing the date of resubmission was 53 days after the January 10, 2003 decision of the director. Even if the six days from the initial submission on February 12, 2003 until the director's rejection notice of February 18, 2003 and an extra three days for mailing that notice are deducted from the 53 days, the appeal was untimely.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states in relevant part

*Untimely appeal treated as motion.* If an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The regulation at 8 C.F.R. § 103.5(a)(1) states in part as follows:

Any motion to reconsider an action by [CIS] filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before [CIS] filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of [CIS] where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

In some situations, the time for filing a notice of appeal is shorter than the time allowed for filing a motion to reopen or a motion to reconsider. Appeals of revocation decisions must be made within fifteen days of the decision, plus three days when the notice of the decision is by mail. See 8 C.F.R. § 205.2(d); 8 C.F.R. § 103.5a(b). In such a situation, an untimely appeal might nonetheless comply with the timeliness requirements for a motion to reopen or a motion to reconsider.

However, in the instant case the time for filing the appeal was thirty days, plus three days because the notice of the decision was by mail, the same period as for motions to reopen and motions to reconsider. The only exception to the thirty-three day period for these post-decision motions pertains to motions to reopen, “where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.” 8 C.F.R. § 103.5(a)(1).

In the instant case, no evidence indicates that the delay in submitting the notice of the appeal was beyond the control of the applicant or petitioner.

For the foregoing reasons, the untimely appeal in the instant case would not qualify as either a motion to reopen or a motion to reconsider, since the appeal fails to meet the timeliness requirements for either of those types of motions, and since no evidence in the record indicates that the exception to the timeliness requirement for a motion to reopen applies.

The notice of appeal in the instant case was not filed on behalf of a person with legal standing and was not filed by a representative recognized by the regulations. Moreover, the notice of appeal was untimely and it fails to meet the requirements for a motion to reopen or a motion to reconsider. For these reasons the appeal must be rejected.

ORDER:       The appeal is rejected.