



U.S. Citizenship
and Immigration
Services

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FILE: WAC 06 254 53200 Office: CALIFORNIA SERVICE CENTER Date: FEB 08 2008

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1) 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 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. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued the decision on March 12, 2007. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Although the petitioner dated the appeal April 9, 2007, it was received by Citizenship and Immigration Services (CIS) on April 23, 2007, or 42 days after the decision was issued. 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 service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

It should further be noted that the Form I-290B (Notice of Appeal) was executed by the beneficiary, not the petitioner or any authorized representative of the petitioner. Citizenship and Immigration Services (CIS) regulations specifically prohibit the beneficiary of a visa petition, or a representative acting on the beneficiary's behalf, from filing a petition. The beneficiary of a visa petition is not a recognized party in the proceedings. 8 C.F.R. § 103.2(a)(3). As the beneficiary is not a recognized party, he is not authorized to file the appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). For this additional reason, the appeal must be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

As the appeal was untimely filed, and filed by the beneficiary who is not a recognized party in these proceedings, the appeal must be rejected.

ORDER: The appeal is rejected.