

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



D4

File: EAC 07 243 52994 Office: VERMONT SERVICE CENTER Date: FEB 08 2008

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(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 director of the Vermont Service Center denied the H-2B 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 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 date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on October 2, 2007. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. However, Citizenship and Immigration Services (CIS) did not receive the applicant's appeal until November 6, 2007, 35 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.

If the appeal had been timely filed and therefore came within the AAO's jurisdiction, it would have been subject to the CIS regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(I), which requires the AAO to reject an appeal that is not filed by a person or entity authorized to do so by the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(I).<sup>1</sup> As the appeal was untimely filed, the appeal must be rejected.

**ORDER:** The appeal is rejected.

---

<sup>1</sup> A person appearing before Citizenship and Immigration Services (CIS) in a representative capacity must file a Form G-28 (Notice of Appearance), signed by the petitioner, that identifies the provisions of 8 C.F.R. § 292.1 under which he or she is entitled to represent the petitioner before CIS. *See* 8 C.F.R. § 292.4(a). The Form G-28 indicates that the person who signed and filed the Form I-290B (Notice of Appeal), [REDACTED], did so as the petitioner's "designated agent/representative." Such information does not identify any provision of 8 C.F.R. § 292.1 under which [REDACTED] is entitled to represent the petitioner before CIS. Therefore, the AAO is treating the petitioner as self-represented, and is not providing a copy of this decision to [REDACTED] or the organization for which he works. For the future, the petitioner should note that if a timely appeal is filed by a person not authorized to do so in accordance with 8 C.F.R. § 292.1, the AAO will reject that appeal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I), which states that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed, and that, in such a case, any filing fee the Service accepted will not be refunded.