

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAY 17 2013** OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

The regulation at 8 C.F.R. § 103.3(a)(2) provides, in pertinent part:

(v) 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 the Service has accepted will not be refunded.

(2) 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 the Service has accepted will not be refunded regardless of the action taken.

(ii) When favorable action warranted. . . .

(iii) When favorable action not warranted. If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the [AAO]. The official shall also forward the appeal

and the relating record of proceeding to the [AAO]. The appeal may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.

The regulation at 8 C.F.R. § 103.2(a)(1) provides:

General. Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.

The instructions for the Form I-290B, Notice of Appeal or Motion, advise the appellant that:

If you wish, you may be represented at no expense to the U.S. Government by an attorney or other duly authorized representative. Your attorney or representative must submit a Form G-28 with the appeal or motion. If the appeal or motion is filed without a properly executed Form G-28, it will be dismissed or rejected.

Additionally, the regulation at 8 C.F.R. § 292.4(a), as well as the instructions to the Form G-28, provides that:

An appearance must be filed on the appropriate form as prescribed by DHS [Department of Homeland Security] by the attorney or accredited representative appearing in each case. The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. The appearance will be recognized by the specific immigration component of DHS in which it was filed until the conclusion of the matter for which it was entered. *This does not change the requirement that a new form must be filed with an appeal filed with the Administrative Appeals Office of USCIS.* [emphasis added]

Finally, the regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

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

Only an affected party, a person or entity with legal standing, may file an appeal of an unfavorable decision. Form I-290B is signed by [REDACTED] reflecting a date of June 12, 2012. However, [REDACTED] did not submit a new Form G-28 with the appeal authorizing him

to act on behalf of the petitioner. Instead, [REDACTED] submitted a copy of a previously submitted Form G-28.

By fax on April 2, 2013, the AAO requested [REDACTED] to submit a new and duly executed Form G-28, including the correct mailing address for the petitioner, in accordance with the instructions for Form I-290B and Form G-28, and the regulation at 8 C.F.R. § 292.4(a). The request was transmitted to the fax number listed on Form I-290B and on counsel's letterhead, and advised [REDACTED] to submit the properly executed Form G-28 to the AAO within 10 calendar days. On April 15, 2013, [REDACTED] by fax, re-submitted a copy of the Form G-28 that accompanied the I-140 petition filed on February 24, 2011, which is already part of the record. As [REDACTED] failed to file a *new* Form G-28 to accompany the appeal on behalf of the petitioner, he has failed to comply with the AAO's request.

As [REDACTED] has failed to provide a properly executed Form G-28 authorizing him to act on behalf of the petitioner in the appellate stage of this proceeding, he cannot be considered as the petitioner's legal representative. Accordingly, the appeal has not been filed by the petitioner or by any entity with legal standing in the proceeding. Therefore, the appeal has not been properly filed and must be rejected.

ORDER: The appeal is rejected.