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**U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090**



**U.S. Citizenship  
and Immigration  
Services**

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**JUL 16 2009**

FILE: LIN 06 200 52599      Office: NEBRASKA SERVICE CENTER      Date:

IN RE: Petitioner:  
Beneficiary: [REDACTED]

PETITION: Immigrant 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 BENEFICIARY:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).



John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The appeal will also be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A).

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 after 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 June 23, 2007. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. The appeal was received by the director on July 27, 2007, 34 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, it must be rejected.

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. In the instant case, as discussed below, this appeal was not properly filed. Because the appeal was not properly filed, it will not be treated as a motion to reopen or a motion to reconsider under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

Counsel indicates on the Form I-290B, Notice of Appeal to the Administrative Appeals Office, that she represents the beneficiary. The Form G-28, Entry of Appearance as Attorney or Representative, submitted in conjunction with the Form I-290B, is signed by counsel and by the beneficiary. U.S. Citizenship and Immigration Services (USCIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). The record does contain a Form G-28 purporting to authorize [REDACTED]

[REDACTED] to act on behalf of the petitioner. The regulation at 8 C.F.R. § 103.2(a)(3) specifies that an applicant may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." In this case, neither [REDACTED] nor [REDACTED] are authorized representatives. 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.

As the appeal is untimely and was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(B) and 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

**ORDER:** The appeal is rejected.