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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

PUBLIC COPY



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DATE: NOV 21 2010 OFFICE: NEBRASKA SERVICE CENTER

FILE:



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant petition for Alien Worker as a Skilled Worker or a Professional pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)

ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was filed on January 22, 2007, accompanied by a Form G-28 (Notice of Entry of Appearance as Attorney or Representative) signed by [REDACTED] on behalf of the petitioner and by [REDACTED] the petitioner's initial legal representative. The petition was denied by the Director, Nebraska Service Center (Director), on May 3, 2008.

The petitioner filed a timely appeal in June 2008 [REDACTED] accompanied by a Form G-28 signed by [REDACTED] on behalf of the petitioner and by [REDACTED] on behalf of the law firm [REDACTED]. The appeal was dismissed by the Chief, Administrative Appeals Office (AAO), on September 21, 2011.

Subsequent to the filing of the initial appeal, a second appeal was filed on July 16, 2008 [REDACTED] by [REDACTED] the petitioner's initial legal representative. [REDACTED] identified the second appeal as "In the Matter of [REDACTED] (the beneficiary) and did not submit a new Form G-28.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an appeal must be filed 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). An untimely appeal must be rejected. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

On August 14, 2008, the Director issued a decision on the second appeal. The Director found that the appeal (Form I-290B) was not timely filed, treated it as a motion to reopen and reconsider, determined that the grounds for the original denial of the petition had not been overcome, and affirmed his previous decision denying the petition. The Director stated that the decision could be appealed, but no further appeal was filed by the petitioner.

The Form I-290B, Notice of Appeal or Motion, filed in July 2008 [REDACTED] should not have been considered on the merits since a prior appeal had already been filed [REDACTED] which awaited adjudication. Furthermore, the Form I-290B filed by [REDACTED] in July 2008 appears to indicate that he was representing the beneficiary, not the petitioner (who by this time had new legal representation - [REDACTED]). The beneficiary does not have standing in this proceeding. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) permits an "affected party" to "be represented by an attorney or representative" but specifically states that the affected party "does not include the beneficiary of a visa petition." In any event, no Form G-28 was submitted by [REDACTED] confirm that he was representing anybody in July 2008.

For the reasons discussed above, there was no legal basis for the appeal filed by [REDACTED] in July 2008. Accordingly, the AAO will withdraw the Director's decision and reject the appeal.

ORDER: The Director's decision of August 14, 2008 is withdrawn. The appeal is rejected.