

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



B6

DATE: **OCT 02 2012** OFFICE: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

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 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,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner describes itself as a printing business. It seeks to permanently employ the beneficiary in the United States as a printing machine operator. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (*the Act*), 8 U.S.C. § 1153(b)(3)(A).

The Forms I-290B, Notice of Appeal or Motion and G-28, Notice of Entry of Appearance as Attorney or Accredited Representative were signed by [REDACTED] the Law Office of [REDACTED]

The regulation governing representation in filing immigration petitions and/or applications with United States Citizenship and Immigration Services (USCIS) is found at 8 C.F.R. § 103.2(a)(3), which provides in pertinent part that:

(3) *Representation.* An applicant or petitioner 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.

The regulation at 8 C.F.R. § 1.1(f) states:

The term *attorney* means any person who eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law.

The regulation at 8 C.F.R. § 292.1(a)(6) encompasses the following type of foreign attorneys:

Attorneys outside the United States. An attorney, other than one described in 8 C.F.R. 1.1(f), who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which he or she resides and who is engaged in such practice, may represent parties in matters before [the Department of Homeland Security (DHS)], provided that he or she represents persons only in matters outside the geographical confines of the United States as defined in section 101(a)(38) of the Act, and that the DHS official before whom he or she wishes to appear allows such representation as a matter of discretion.

According to a review of the list of disciplined attorneys in the State of California, available on the internet at <http://members.calbar.ca.gov>, [REDACTED] was disbarred from the practice of law on June 21, 2012. Furthermore, according to a review of the most recent List of Currently Disciplined

Practitioners maintained by the Executive Office for Immigration Review, available at [REDACTED] (accessed on September 21, 2012), Mr. [REDACTED] was suspended on May 7, 2012 from practicing before the Board of Immigration Appeals (BIA), Immigration Courts, and DHS, and has not been reinstated to practice before the BIA, Immigration Courts, and DHS. Because the petitioner is represented by a disbarred and/or suspended/expelled attorney, the AAO will not recognize counsel in this proceeding.

The record indicates that the appeal was 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 or the attorney or representative of record must submit 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. § 103.8(b). The date of filing is not the date of submission, but the date of actual receipt with the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i).

The director issued the decision on **September 27, 2009**. The director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The Form I-290B, Notice of Appeal or Motion, was received by the service center on January 4, 2010, or **99** days after the decision was issued. Accordingly, the appeal was untimely filed and 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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director, Nebraska Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

ORDER: The appeal is rejected.