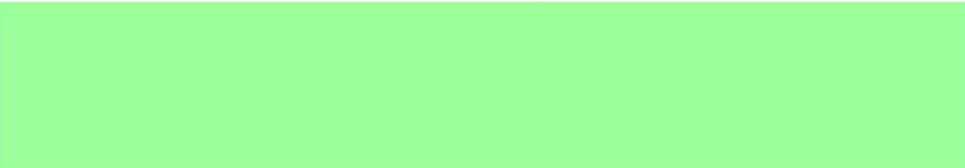


(b)(6)

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

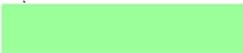


U.S. Citizenship
and Immigration
Services

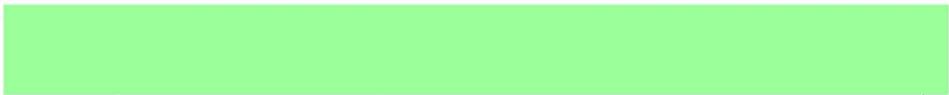


Date: **NOV 25 2013**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

for
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

On the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), the petitioner states that it is a "general hospital and surgical services" business established in 1994 which employs 691 personnel. In order to employ the beneficiary in what it designates as a "staff nurse" position, the seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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 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. § 103.8(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 denied the petition on August 30, 2011. It is noted that the director properly gave notice to the petitioner of the timeframe to file the appeal. Neither the Immigration and Nationality Act (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 U.S. Citizenship and Immigration Services (USCIS) on Tuesday, October 4, 2011, which is 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 Director of the Vermont Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

It must be noted that even if the appeal was timely filed, the petitioner's prior counsel that claimed to file the instant appeal on behalf of the petitioner failed to submit a new Form G-28, Notice of Entry of Appearance as Attorney or Representative.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) states, in part, the following:

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.

Furthermore, in accordance with the USCIS regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Form I-290B, a "new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office of USCIS." This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010).

While the record contains a Form G-28 signed by the petitioner's official on June 21, 2011, it was not "new" in that (1) it was signed by the petitioner and the attorney prior to the director's denial of the petition,¹ and (2) the Form G-28 indicates that counsel's appearance is in regard to the Form I-129, not the appeal. Thus, as the submitted Form G-28 did not meet the requirements of the regulation at 8 C.F.R. § 292.4(a) or the instructions to the Form I-290B, counsel failed to establish that she represents the petitioner as an attorney or accredited representative with regard to the instant appeal before the AAO.

The regulation at 8 C.F.R. § 292.4(a) governs appearances by attorneys or representatives. It states, in pertinent part:

Authority to appear and act. An appearance must be filed on the appropriate form as prescribed by [the U.S. Department of Homeland Security (DHS)] 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 to for the appearance to be recognized by DHS.

In accordance with 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii), the AAO sent counsel a facsimile on August 26, 2013, notifying her that a properly executed Form G-28, signed by counsel and the consenting affected party, must be submitted to the AAO within fifteen calendar days. However, counsel failed to respond to this request. The AAO therefore concludes that even if the appeal had been filed on a timely basis, the appeal was improperly filed and must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1), which calls for rejection of an improperly filed appeal, where the person filing it is not entitled to do so.

ORDER: The appeal is rejected. The petition remains denied.

¹ The record indicates that the petition was filed on June 2, 2011; however, it appears that the Form G-28 that accompanied the petition was not signed by anyone representing the petitioner. Accordingly, the service center sent a notice to the petitioner on June 8, 2011, stating that the Form G-28 would not be recognized and provided the petitioner an opportunity to submit a properly completed and signed Form G-28. A new Form G-28 signed by the petitioner and its prior counsel on June 21, 2011, was submitted to USCIS on June 24, 2011.