

**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**

DY

DATE:

**DEC 08 2012**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

PETITION:

Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[REDACTED]

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 "Erica Feldman" or "Erica Feldman" over "Rosenberg".

Ron Rosenberg

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The director of the California Service Center denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) rejected the petitioner's subsequent appeal as untimely. The petitioner has now filed a motion to reopen based on ineffective assistance of counsel. The AAO will reject the motion.

The petitioner filed a nonimmigrant petition seeking to extend the beneficiary's employment as an intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The director denied the petition on the basis that the petitioner failed to show it would employ the beneficiary in a managerial or executive capacity. The AAO rejected the petitioner's subsequent appeal as untimely. The petitioner does not dispute the untimeliness of the appeal, but now submits a motion to reopen based on a claim that it received ineffective assistance of counsel.

The regulation at 8 C.F.R. § 103.5(a)(1) states that in order to properly file a motion to reopen or motion to reconsider, the affected party must do so within 30 days of the decision the motion seeks to reconsider or reopen. 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). With regard to motions to reopen, an untimely filing may be excused in the exercise of discretion where it is demonstrated that the delay is reasonable and beyond the petitioner's control. *Id.*

The record indicates that the AAO issued its rejection on January 10, 2012. The AAO notified the petitioner that it had 33 days to file a motion to reopen or motion to reconsider. The U.S. Citizenship and Immigration Services (USCIS) received the instant motion to reopen on February 28, 2012, 49 days after the AAO issued its rejection.<sup>1</sup> The motion is therefore untimely filed.

Although the petitioner contends its *appeal* was untimely filed because it received ineffective assistance from its former claimed representative, it does not provide an explanation for the untimely submission of the instant motion to reopen. The petitioner therefore fails to establish that the delay in filing the motion to reopen was reasonable and beyond its control.

Even if the motion to reopen were timely, however, it would fail on the merits. The petitioner concedes that its appeal was untimely filed. The motion is based on the petitioner's claim that it received "ineffective assistance of counsel." However, the petitioner acknowledges that the individual from whom it sought advice is not actually an attorney or accredited representative. Further, the record contains no evidence that the petitioner's appeal was prepared and filed by the claimed representative. The appeal was not accompanied by a Form G-28, Notice of Entry as Appearance as Attorney or Representative, and the record reflects that the petitioner was self-represented prior to filing the instant motion.

Assuming that the petitioner did entrust the claimed representative to file its appeal, there is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited

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<sup>1</sup> The motion was initially filed with USCIS on February 17, 2012, but was rejected due to lack of signature. The petitioner then resubmitted the corrected motion, which USCIS received as properly filed on February 28, 2012. The AAO notes that, even if February 17, 2012 were used as the date of filing, the motion would still be untimely, as February 17, 2012 is 38 days after the issuance of the rejection.

representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1; *see also Hernandez v. Mukasey*, 524 F.3d 1014 (9th Cir. 2008) ("non-attorney immigration consultants simply lack the expertise and legal and professional duties to their clients that are the necessary preconditions for ineffective assistance of counsel claims"). The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) (requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

As a matter of discretion, the applicant's failure to file the motion to reopen within the period allowed will not be excused as either reasonable or beyond the control of the applicant. The untimely filing of the motion cannot be excused and the untimely filed motion must be rejected. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

**ORDER:** The motion is rejected as untimely filed.