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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

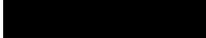


**U.S. Citizenship  
and Immigration  
Services**



B2

DATE: **OCT 07 2011** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to  
Section 203(b)(1)(A) of the Immigration and Nationality Act; 8 U.S.C. § 1153(b)(1)(A)

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,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal.

Under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a), as well as the instructions to the Form I-290B Notice of Appeal, if an attorney files an appeal with the Administrative Appeals Office, the filing must include a newly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, even if the record includes an older form from the same attorney. This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (February 2, 2010).

The petitioner filed Form I-140 on March 2, 2009, with Form G-28 dated January 1, 2009. The director denied the petition on January 11, 2010. Counsel filed the appeal on March 23, 2010, but the filing did not include a new Form G-28 as required.

Under the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2), if an appeal is otherwise properly filed without a Form G-28, then USCIS must contact the attorney and attempt to obtain the required form. Here, however, as the appeal was not otherwise properly filed, the AAO will not request a Form G-28 and the petitioner will be considered as self-represented.

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 of 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 regulation at 8 C.F.R. § 1.1(h) explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. 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).

Again, the record indicates that the director issued the decision on January 11, 2010. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. The notice was mailed to counsel's address as reflected on his January 1, 2009 Form G-28. Although a copy of the denial was later re-mailed to counsel's present address, the record reflects that the decision was properly mailed to counsel's address of record.

In a letter dated March 22, 2010, submitted on appeal, counsel claims that the appeal was timely filed as only "[a]fter numerous inquiries, [was] a copy of the decision was mailed to this office on 02/25/2010." The AAO notes again, however, that the director's decision was mailed to counsel's address as indicated on the Form G-28 contained in the record at that time. *See* 8 C.F.R. § 103.5a(a)(1) (service of notices and decisions consists of mailing copies to the last known address). Counsel's claim regarding the timeliness of the appeal based upon the failure to receive the denial notice is not persuasive. The director's reliance on the unrevoked address furnished by counsel on the existing Form G-28 was proper. *See, e.g., Tobeth-Tangang v. Gonzales*, 440 F.3d 537, 540 (1<sup>st</sup> Cir. 2006); *Radkov v. Ashcroft*, 375 F.3d 96, 99 (1<sup>st</sup> Cir. 2004).

In this case, the petitioner's appeal was not received by the director until March 23, 2010, 71 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 Nebraska Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

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

**ORDER:** The appeal is rejected.