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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: **APR 19 2012**

Office: TEXAS 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:

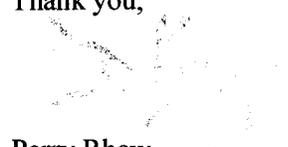
SELF-REPRESENTED

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.

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 denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly filed.

The petitioner is a theatre. It seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. Noting that the record was deficient, the director issued a notice requesting further evidence. After the petitioner failed to submit the requested evidence, the director denied the petition for abandonment, pursuant to 8 C.F.R. § 103.2(b)(15).

The director correctly informed the petitioner that no appeal would lie from the decision. Regardless, counsel for the beneficiary submitted an appeal on October 22, 2010.

The regulations provide that no appeal lies from the denial of a petition for abandonment. 8 C.F.R. § 103.2(b)(15). As there is no appeal from the director's denial, the appeal must be rejected.

In addition to the preceding basis for rejection, the AAO notes that the appeal was not filed by an affected party.

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

Improperly filed appeal -- (A) Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

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. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states that the "affected party" (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition."

The Form I-290B, Notice of Appeal or Motion, was filed by attorney [REDACTED] on October 22, 2010. The Form G-28, Notice of Entry of Appearance as Attorney or Representative, submitted by [REDACTED] both at the time of filing and on appeal was signed by the beneficiary only. The record does not include a properly executed Form G-28 indicating that [REDACTED] represented the petitioning entity and therefore had authorization to file the appeal.

In this matter, the appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the attorney for the beneficiary. For this additional reason, the appeal must be rejected as improperly filed.

ORDER: The appeal is rejected.