

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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 20 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 or Motion, if an attorney files an appeal with the AAO, 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 November 9, 2010, with Form G-28 signed by counsel on November 4, 2010. The director denied the petition on December 28, 2010. Counsel filed the appeal on April 27, 2011, 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 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 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 submission, but the date of actual receipt with the proper signature and the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i). The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) provides that an appeal which is not filed with the time allowed must be rejected as improperly filed.

The record indicates that the service center director issued the decision on December 28, 2010. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal and listed the proper fee for an appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit. *See Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006). Even if the appeal was delayed by the overnight delivery service, the error would not warrant special consideration of the appeal. *Id.* The notice further advised: "Your notice of appeal must be filed with this office at the address at the top of this page." The notice concluded: "**The appeal may not be filed directly with the Administrative Appeals Office. The appeal must be filed at the address at the top of this page** [bold emphasis in original]."

Counsel attempted to file the appeal on January 27, 2011 and March 9, 2011, but the appeal was not accepted by the service center initially because it did not include the correct filing fee and subsequently because it had not been properly signed. Appeals that are not properly signed or

that are submitted with the wrong fee do not retain a filing date. *See* 8 C.F.R. § 103.2(a)(7). Furthermore, counsel attempted to submit the filing fee directly to the AAO on February 28, 2011, rather than properly filing the fee with the Texas Service Center. In fact, counsel submitted a copy of the check dated on February 25, 2011, clearly indicating the appeal was not properly filed within 33 days. Counsel finally submitted a signed Form I-290B with the proper filing fee of \$630 to the Texas Service Center on April 27, 2011, approximately four months after the decision of the director. 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 Texas 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.