



U.S. Citizenship
and Immigration
Services

B2

DATE: **DEC 18 2012** Office: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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,

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Ron Rosenberg
Acting 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 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.¹ The director determined the petitioner had not established that the beneficiary has the requisite extraordinary ability through extensive documentation and sustained national or international acclaim. The director also determined that the petitioner had failed to demonstrate that he will substantially benefit prospectively the United States.

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 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. § 1.2 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). Further, 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.” Finally, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) provides that an appeal which is not filed within the time allowed must be rejected as improperly filed.

The record indicates that the service center director issued the decision on April 26, 2012. It is noted that the service center director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit. Although the beneficiary dated the Form I-290B (Notice of Appeal or Motion) May 21, 2012, it was not received by U.S. Citizenship and Immigration Services until June 1, 2012, or 36 days after the decision was issued. Accordingly, the appeal was untimely filed.

In addition to being untimely filed, the appeal was filed by the alien beneficiary.² 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.” In this instance, the appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the beneficiary. Therefore,

¹ In the underlying proceeding, the petitioner was represented by attorney [REDACTED]. However, the regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Forms I-290B and G-28 require that a new Form G-28 must be filed with an appeal filed with the Administrative Appeals Office. The regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010). The Form G-28 submitted on appeal recognizes [REDACTED] representation of the beneficiary. No new Form G-28 has been submitted on behalf of the petitioner. Accordingly, the petitioner is considered to be self-represented in the appeal proceeding.

² On the Form I-290B, the beneficiary signed under Part 4, “Signature of Person Filing the Appeal/Motion.”

as the appeal was filed by a person not entitled to file it and was untimely, the appeal must be rejected as improperly filed.

In the alternative, if not rejected for the above reasons, the appeal would be summarily dismissed. Part 3 of the Form I-290B includes a space for the petitioner to “[p]rovide a statement explaining any erroneous conclusion of law or fact in the decision being appealed.” The beneficiary states: “Please see attorney brief and supporting evidence that will be subsequently submitted.”

The beneficiary’s statement fails to identify any erroneous conclusion of law or fact in the director’s decision. The beneficiary does not specifically challenge any of the director’s findings or point to specific errors in the director’s analyses of the documentary evidence submitted for the categories of evidence at 8 C.F.R. § 204.5(h)(3). Further, the beneficiary does not explain how the specific documentary evidence that he submitted supports a finding of eligibility. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009). The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that “[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.” In this matter, the beneficiary has not identified as a proper basis for the appeal an erroneous conclusion of law or a statement of fact in the director’s decision.

The beneficiary indicated that a brief and/or evidence would be submitted to the AAO within 30 days. The appeal was filed on June 14, 2012. As of this date, more than five months later, the AAO has received nothing further.

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The petitioner has not specifically addressed the reasons stated for denial and has not provided any additional evidence pertaining to the beneficiary’s eligibility for the classification sought. Therefore, if not rejected, the appeal would be summarily dismissed.

ORDER: The appeal is rejected.