

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

[Redacted]

B2

DATE: **OCT 03 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:

[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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal based on a finding that the petitioner misrepresented material facts within his petition filing in addition to his failure to demonstrate eligibility for the classification sought. The matter is now before the AAO on a second appeal. The appeal will be rejected.

The record indicates that the AAO issued the decision on the first appeal on January 23, 2012. The petitioner then filed the present appeal on March 1, 2012.

The petitioner's appeal must be rejected. The AAO does not exercise appellate jurisdiction over its own decisions. The AAO exercises appellate jurisdiction over only the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1(effective March 1, 2003). Accordingly, the appeal is not properly within the AAO's jurisdiction.

As noted in the AAO's cover letter, the petitioner had the option of filing a motion to reopen or a motion to reconsider the AAO's most recent decision within 33 days of service pursuant to 8 C.F.R. § 103.5, but the petitioner checked the box indicating he was filing an appeal within Part 2 of the Form I-290B. Within Part 3 of the Form I-290B, the petitioner referenced that he was filing a motion to reconsider. The burden is on the petitioner to select the appropriate filing on the Form I-290B, Notice of Appeal or Motion rather than to rely on the AAO to infer or second-guess the petitioner's intent. As the appeal was not properly filed, it will be rejected. 8 C.F.R. §103.3(a)(2)(v)(A)(I). In the alternative, the appeal will be rejected as untimely filed. The regulation at 8 C.F.R. § 103.2(a)(1) provides:

General. Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter . . . must be filed with the location and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations

As it pertains to the proper filing of an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides:

Filing Appeal. The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by §103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

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 with the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the AAO issued the decision on January 23, 2012, and properly gave notice to the petitioner that the file would be returned to the office that made the original determination in the case and that any subsequent request or filing should be made with that office, specifically the

Texas Service Center. Despite the clear instructions in the director's notice and on the Form I-290B that the form should "not be submitted directly to the AAO," the petitioner sent the appeal to the AAO. The AAO returned the form to the petitioner on February 23, 2012. USCIS received the properly filed appeal on March 1, 2012, or 38 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. Regardless, as stated above, the AAO has no jurisdiction to consider an appeal of its own decision; thus, the filing is rejected.

ORDER: The appeal is rejected.