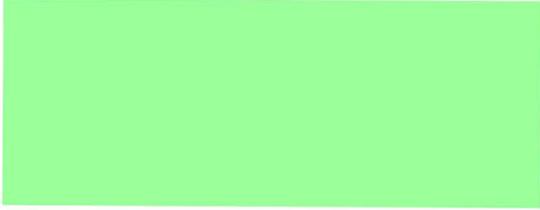




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JAN 07 2013** 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:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

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. § 1.2 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). The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(I) 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 June 28, 2012. It is noted that the service center director properly gave notice to the petitioner that he 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 petitioner's prior counsel<sup>1</sup> dated the Form I-290B July 27, 2012, it was not received by U.S. Citizenship and Immigration Services until August 1, 2012, or 34 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.

In the alternative, the appeal will 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

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<sup>1</sup> The Form I-290B was signed by attorney [REDACTED]. However, [REDACTED] did not submit a *new* Form G-28 indicating his continued representation of the petitioner on appeal. Rather, [REDACTED] submitted a copy of a Form G-28 that was signed on July 11, 2011 prior to the appeal proceeding. The regulation at 8 C.F.R. § 292.4(a) as well as the instructions on the Forms I-290B and G-28 specifically indicate that an appeal must be accompanied by a *new* Form G-28. Without a newly filed Form G-28, the record does not establish that the appeal was filed by a party with standing in the case. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(I) states that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. The appeal is rejected for this additional reason and the petitioner is considered to be self-represented.

fact in the decision being appealed.” Counsel states: “A brief and/or additional evidence will be submitted to the AAO.”

Counsel’s statement fails to identify any erroneous conclusion of law or fact in the director’s decision. Counsel 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, counsel does not explain how the specific documentary evidence that the petitioner submitted supports a finding of eligibility. 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, counsel 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.

Counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. The appeal was filed on August 1, 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 his eligibility for the classification sought. Therefore, if not rejected, the appeal would be summarily dismissed.

**ORDER:** The appeal is rejected.