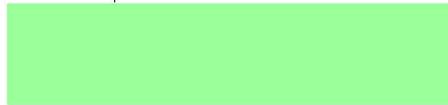




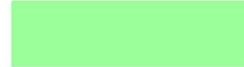
**U.S. Citizenship
and Immigration
Services**

(b)(6)

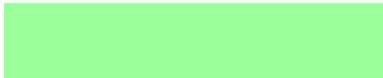


DATE: **JAN 11 2013**

Office: NEBRASKA SERVICE CENTER



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

The petitioner seeks classification 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. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

The regulation at 8 C.F.R. § 103.3(a)(2) provides, in pertinent part:

(v) *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.

(2) *Appeal by attorney or representative without proper Form G-28—*

(i) *General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

(ii) *When favorable action warranted. . . .*

(iii) *When favorable action not warranted.* If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the [AAO]. The official shall also forward the appeal and the relating record of proceeding to the [AAO]. The appeal may be considered properly filed as of its original filing date if the attorney or representative

submits a properly executed Form G-28 entitling that person to file the appeal.

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 shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.

The instructions for the Form I-290B, Notice of Appeal or Motion, advise the appellant that:

If you wish, you may be represented at no expense to the U.S. Government by an attorney or other duly authorized representative. Your attorney or representative must submit a Form G-28 with the appeal or motion. If the appeal or motion is filed without a properly executed Form G-28, it will be dismissed or rejected.

Additionally, the regulation at 8 C.F.R. § 292.4(a), as well as the instructions to the Form G-28, provides that:

An appearance must be filed on the appropriate form as prescribed by DHS [Department of Homeland Security] by the attorney or accredited representative appearing in each case. The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. The appearance will be recognized by the specific immigration component of DHS in which it was filed until the conclusion of the matter for which it was entered. *This does not change the requirement that a new form must be filed with an appeal filed with the Administrative Appeals Office of USCIS.* [emphasis added]

Finally, the regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *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.

Only an affected party, a person or entity with legal standing, may file an appeal of an unfavorable decision. Form I-290B is signed by [REDACTED]. However, [REDACTED] did not submit a new Form G-28 with the appeal authorizing him to act on behalf of the petitioner. Instead, [REDACTED] submitted a copy of a previously submitted Form G-28 dated November 1, 2011.

By fax and telephone on December 18, 2012, the AAO requested [REDACTED] to submit a new and duly executed Form G-28 in accordance with the instructions for Form I-290B and Form G-28, and the regulation at 8 C.F.R. § 292.4(a). The request advised [REDACTED] to submit the properly executed Form G-28 to the AAO within 15 calendar days. [REDACTED] failed to respond to the AAO's request.

As [REDACTED] has failed to provide a properly executed Form G-28 authorizing him to act on behalf of the petitioner in the appellate stage of this proceeding, he cannot be considered as the petitioner's legal representative. Accordingly, the appeal has not been filed by the petitioner or by any entity with legal standing in the proceeding. Therefore, the appeal has not been properly filed and must be rejected.

In the alternative, the appeal would have been summarily dismissed. Part 3 of 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." [REDACTED] states: "The adjudicator failed to properly assess the evidence submitted in support of the application. He erred in both law and facts. Applicant, through his attorney, will submit a separate brief and/evidence within 30 days."

[REDACTED] statement fails to identify any erroneous conclusion of law or fact in the director's decision. [REDACTED] 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, [REDACTED] does not explain how the specific documentary evidence that the petitioner 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 petitioner 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.

In Part 2 of Form I-290B, [REDACTED] checked the box indicating that a brief and/or evidence would be submitted to the AAO within 30 days. The appeal was filed on September 24, 2012. As of this date, more than three 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 have been summarily dismissed.

ORDER: The appeal is rejected.