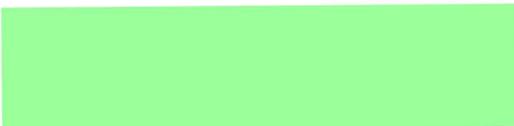


(b)(6)

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**

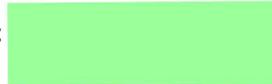


DATE:

MAR 09 2013

Office: TEXAS SERVICE CENTER

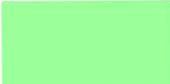
FILE:



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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 and, in the alternative, summarily dismissed.

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.

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 sent by the traditional mail route, 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 submission, 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 service center director issued the decision on June 29, 2012, by facsimile. As the decision was not sent by mail, the petitioner was afforded 30 days to file the appeal, of which the service center director properly notified the petitioner. 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 appeal was due by July 29, 2012. It was not received by the service center until August 1, 2012, or 33 days after the decision was issued. It is noted that service by facsimile is immediate notification unlike service by mail. Consequently, the petitioner was afforded 30 days to file the appeal rather than 33 days. 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.

If timely, the appeal would be summarily dismissed. On appeal, the petitioner fails to specifically address the reasons stated for the denial and to identify any erroneous conclusion of law or statement of fact on the part of the director. Instead, the petitioner merely claims to also meet multiple additional criteria and states that the director's decision was "largely premised on the unilateral imposition of novel, substantive or evidentiary requirements beyond those set forth in the regulations, as well as a fundamental misinterpretation of the facts, and therefore is arbitrary, capricious or an abuse of discretion, or unsupported by substantial evidence." The petitioner failed to provide any specific examples of the errors he attributes to the director.

The reason for filing an appeal is to provide an affected party with the means to remedy what he or she perceives as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v). Without such an error specifically identified within the appeal, the affected party has failed to identify the basis for the appeal. If the petitioner does not explain the specific aspects of the decision that he considers to be incorrect, he has failed to meaningfully identify the reasons for taking an appeal. In order to review the appeal, it would therefore be necessary to search through the record and speculate on what possible errors the petitioner claims. *Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986).

It is insufficient to merely assert that the director made an improper determination. *See Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988) (finding that failure to specify reasons for an appeal is grounds for summary dismissal under regulations similar to those governing the AAO).

As stated in the regulation at 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the concerned party fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. *Cf. Idy v. Holder*, 674 F.3d 111, 116 (1st Cir. 2012) (where an alien fails to raise any legal issue regarding the Board of Immigration Appeals denial of an inadmissibility waiver, the Court of Appeals is deprived of jurisdiction). *See also Desravines v. U.S. Atty. Gen.*, 343 F. App'x 433, 435 (11th Cir. 2009) (finding that issues not briefed on appeal are deemed abandoned); *Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979) (deeming abandoned an issue raised in the statement of issues but not anywhere else in the brief). In this instance, the petitioner has not identified a basis for the appeal. The petitioner does not contest the director's findings and offers no substantive basis for the filing of the appeal. In this case, the regulation mandates the summary dismissal of the appeal. As the petitioner failed to provide any specific statement or argument regarding the basis of his appeal, the appeal would be summarily dismissed if timely.

ORDER: The appeal is rejected.