

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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

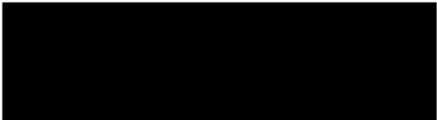


U.S. Citizenship
and Immigration
Services

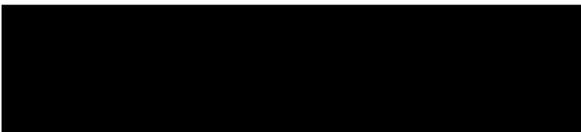


B5

DATE: OCT 07 2011 OFFICE: NEBRASKA SERVICE CENTER



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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,

Perry Rhew
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 AAO will reject the appeal.

Under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a), as well as the instructions to the Form I-290B Notice of Appeal, if an attorney files an appeal with the Administrative Appeals Office, the filing must include a newly executed Form G-28 Notice of Entry of Appearance as Attorney or Representative, even if the record includes an older form from the same attorney. This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (February 2, 2010).

The petitioner filed the Form I-140 petition on October 1, 2009, with a Form G-28 dated September 25, 2009, naming [REDACTED] as the petitioner's attorney of record. The director denied the petition on May 25, 2010. [REDACTED] filed the appeal on June 29, 2010, but the filing did not include a new Form G-28 as required.

Under the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2), if an appeal is otherwise properly filed without a Form G-28, then USCIS must contact the attorney and attempt to obtain the required form. Here, however, the appeal was not otherwise properly filed.

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 file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the petitioner must file the appeal within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

As noted above, the director denied the petition on May 25, 2010. 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.

[REDACTED] dated the Form I-290B appeal notice June 27, 2010, which was the date of the filing deadline. The U.S. Postal Service postmarked the appeal June 28, 2010, and the service center received the appeal on June 29, 2010, or 35 days after the director issued the decision. 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.

Because the lack of a new Form G-28 was not the only defect in the filing of the appeal, USCIS need not solicit a new form from the attorney.

As the appeal was untimely filed without a new, properly executed Form G-28, the AAO must reject the appeal.

ORDER: The appeal is rejected.