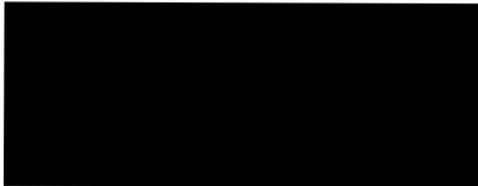


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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B6

FILE: [REDACTED]
WAC 06 120 52537

Office: CALIFORNIA SERVICE CENTER Date: AUG 27 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read 'John F. Grissom'.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely 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 must file the complete appeal within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The regulation at 8 C.F.R. § 1.1(h) states:

The term *day* when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

The record indicates that the director issued the decision on November 10, 2007. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Although the beneficiary's counsel dated the appeal December 13, 2007, it was received by USCIS on December 17 2007, or 37 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 service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO. As the appeal was untimely filed, the appeal must be rejected.

The AAO notes that the two Forms G-28 Notice of Entry of Appearance as Attorney or Representative, found in the record are signed by the beneficiary, and not by the petitioner. United States Citizenship and Immigration Services (USCIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). As the beneficiary and his representative are not recognized parties, counsel is not authorized to file an appeal.¹ 8 C.F.R. § 103.3(a)(1)(iii)(B). As the appeal was not properly filed, for this additional reason, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The AAO also notes that the attorney who submitted the Form I290-B stated that she would submit a brief and/or evidence to the Administrative Appeals Office (AAO) within 30 days. As of this date, more than 20 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

¹ Thus, the petitioner is self-represented.

conclusion of law or statement of fact for the appeal. Although the Form I-290B has some abbreviated comments, the record contains no further explanation of any erroneous conclusion of law or statement of fact. Even if the petitioner had a correctly executed Form G-28 on file, the AAO would not consider the appeal.

ORDER: The appeal is rejected.