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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
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OCT 06 2009

FILE: [Redacted]
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Office: NEBRASKA SERVICE CENTER

Date:

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.

Peffy J. Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen.

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 after service of the unfavorable decision.¹ If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R.

¹ The AAO notes that the petitioner has submitted a properly signed form G-28, Notice of Appearance as Attorney or Representative, seeking to be represented by [REDACTED]

The regulation at 8 C.F.R. § 292.1 provides general representation provisions in immigration matters and lists following six categories of representatives who may represent a person entitled to representation: (1) Attorneys in the United States, (2) Law students and law graduates not yet admitted to the bar, (3) Reputable individuals, (4) Accredited representatives, (5) Accredited officials, and (6) attorneys outside the United States. However, the regulation governing representation in filing immigration petitions and/or applications with USCIS is the regulation at 8 C.F.R. § 103.2(a)(3), which provides in pertinent part that:

(3) *Representation.* An applicant or petitioner may be represented by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter.

Therefore, it is clear that the regulation at 8 C.F.R. § 103.2(a)(3) limits the three categories of representatives, that is, attorneys in the United States, attorneys outside the United States and accredited representatives only in representing applicants or petitioners in filing immigration applications or petitions before U.S. Citizenship and Immigration Services (USCIS) with properly executed Form G-28, while the regulation at 8 C.F.R. § 292.1 allows all six groups of representatives to assist applicants or petitioners with non-filing immigration matters. In the instant case, Ms. [REDACTED] is not an attorney in or outside the United States, nor an accredited representative as defined in § 292.1(a)(4). Therefore, [REDACTED] is not authorized by any regulations to represent a petitioner in filing an I-140 immigrant petition and/or an appeal from the denial of an I-140 petition.

The other categories listed in 8 C.F.R. § 292.1 (law students, law grads, reputable individuals) may ONLY appear in person with an applicant or petitioner at an interview literally before, as in the presence of, a Department of Home Security (DHS) official who must make a discretionary decision to permit them to appear after conducting an inquiry as to the requirements in section 292.1. The regulation at 8 C.F.R. § specifically requires that a reputable individual must get a permission for his appearance from the official before whom he wished to appear. In the instant case, the AAO cannot permit [REDACTED] appearance as a reputable individual to represent the petitioner or receive direct information from the AAO on this appeal. The regulation set forth the following terms and conditions for reputable individuals' representation: he/she is appearing on an individual case basis,

§ 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).

The record indicates that the director issued the decision on January 23, 2009. The director denied the petition as the petitioner failed to submit evidence of its ability to pay the proffered wage. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Although the petitioner dated the appeal February 17, 2009, it was received by the director on February 26, 2009, 34 days after the decision was issued. Accordingly, the appeal was untimely filed. The director accepted the appeal as timely and forwarded the matter to the AAO.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal meets the requirements of a motion to reopen because the petitioner has submitted additional evidence related to the basis of denial, specifically of its ability to pay the proffered wage. 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). Therefore, the director must consider the untimely appeal as a motion to reopen and render a new decision accordingly.

ORDER: The appeal is rejected. The matter is returned to the director for consideration as a motion to reopen.

at the request of the person entitled to representation; he/she is appearing without direct or indirect remuneration and filed a written declaration to that effect; and he/she has a pre-existing relationship or connection with the person entitled to representation.