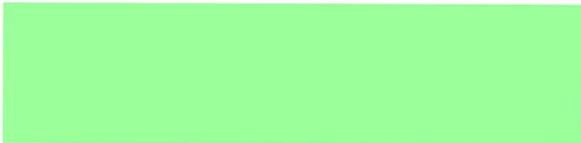


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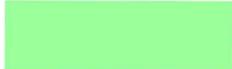
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

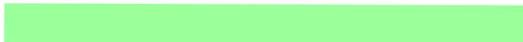


U.S. Citizenship
and Immigration
Services



DATE: **MAY 02 2013** OFFICE: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional 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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a date "107" written below it.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

cc: 

DISCUSSION: The Director, Nebraska Service Center, revoked the approval of 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 describes itself as a home health care provider. It seeks to permanently employ the beneficiary in the United States as a licensed practical nurse. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

The director's decision revoking the petition concludes that the petitioner abandoned the petition by failing to respond to the notice of intent to revoke within the prescribed timeframe.

The record of proceeding contains a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, for the beneficiary's current counsel.¹ Additionally, the Form I-290B, Notice of Appeal or Motion, was signed by the beneficiary's counsel. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically prohibits a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. There is no evidence in the record that the petitioner consented to the filing of the appeal.

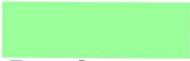
As the appeal was not properly filed, and it is unclear whether or not the petitioner consented to having an appeal filed on its behalf, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

Moreover, the petitioner must appeal a decision to revoke the approval of a petition within 15 days of service. 8 C.F.R. § 205.2(d). If the unfavorable decision was mailed, the appeal must be filed within 18 days. 8 C.F.R. § 103.8(b). An untimely appeal must be rejected as improperly filed. Neither the Act nor the regulations grant the AAO authority to extend this time limit. The filing date is the actual date of receipt at the location designated for filing. 8 C.F.R. § 103.2(a)(7)(i). The appeal must be signed and submitted with the correct fee. *Id.*

The director issued the decision revoking the petition's approval on December 7, 2010. The director properly gave notice to the petitioner that it had 18 days to file the appeal. The beneficiary's counsel filed the Form I-290B, Notice of Appeal or Motion, on December 13, 2012, or 707 days after the decision was issued and acknowledged the late filing of the appeal. Accordingly, the appeal also is untimely.

If an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director, Nebraska Service Center. 8 C.F.R. § 103.5(a)(1)(ii). As required by 8 C.F.R. § 103.3(a)(2)(ii)-(iv), the director reviewed the appeal

¹ A courtesy copy of this decision will be mailed to the beneficiary's counsel.



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prior to forwarding it to the AAO, and did not conclude that it met the requirements of a motion or otherwise warrant favorable action.

ORDER: The appeal is rejected.