

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



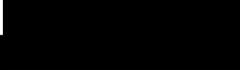
U.S. Citizenship
and Immigration
Services



C1

DATE **OCT 04 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

Petitioner: 

Beneficiary: 

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

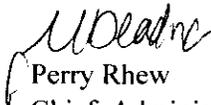
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant 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 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 appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(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). An appeal that is not filed within the time allowed will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(B)(i).

The regulation at 8 C.F.R. § 103.2(a)(7)(i) states, in pertinent part:

An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

The record indicates that the service center director issued the decision on March 27, 2012. It is noted that the service center director gave notice to the petitioner that it had 30 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The record indicates that the Form I-290B was initially submitted on April 27, 2012, but was returned by USCIS because it did not contain a signature in the signature block. The signed appeal was received on May 10, 2012, or 44 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 Director of the Cermont 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.

The AAO further notes that 8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of appeals, certifications, and reopening or reconsideration, "affected party" (in addition to U.S. Citizenship and Immigration Services (USCIS)) means the person or entity with legal standing in a proceeding. The USCIS regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1) states that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, USCIS will not refund any filing fee it has accepted.

Here, the Form I-290B was not signed by an authorized official of the petitioning entity, but by [REDACTED] who claims to represent the petitioner. 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 require that a "new [Form G-28, Notice of Appearance as Attorney or Representative] must be filed with an appeal filed with the Administrative Appeals Office." This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010). Part 1 of the Form G-28 accompanying the appeal does not contain the signature of an authorized representative from the petitioning entity. Instead, the signature line states "[REDACTED] [REDACTED]" followed by the initials "cad." As [REDACTED] filed the appeal but failed to submit a properly signed and executed G-28, the AAO cannot find that the appeal was filed by an affected party with legal standing in the proceeding. Therefore, the AAO must reject the appeal as improperly filed.

As the appeal was untimely and improperly filed, the appeal must be rejected.

ORDER: The appeal is rejected.