

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



C10

Date: **DEC 26 2012** Office: VERMONT SERVICE CENTER

FILE:



IN RE:



PETITION: Petition for Immigrant Abused Parent Pursuant to Section 204(a)(1)(A)(vii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(vii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED¹

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

¹ The regulation at 8 C.F.R. § 292.4(a) governs appearances by attorney or representatives and states, in pertinent part: "The appearance will be recognized by the specific immigration component of DHS in which it was filed until the conclusion of the matter for which it was entered. This does not change the requirement that a new form must be filed with an appeal filed with the Administrative Appeals Office of USCIS." Here, the appeal is not accompanied by a new, properly executed Form G-28. As such, the AAO does not recognize the attorney in this proceeding.

DISCUSSION: The Director, Vermont Service Center, denied the immigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the petition will remain denied.

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).

The record indicates that the service center director issued the decision on October 21, 2011. It is noted that the service center director properly gave notice to the petitioner that she had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The Form I-290B was not received by the service center until January 17, 2012, or 88 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 Vermont 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.

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

ORDER: The appeal is rejected.