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U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Room 3000  
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U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 07 135 52052 Office: VERMONT SERVICE CENTER Date: OCT 29 2008

IN RE: Petitioner:  
Beneficiary:

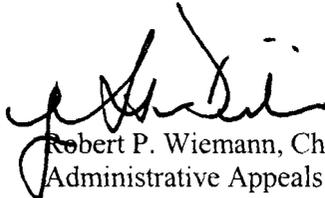


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as both improperly and untimely filed.

The petitioner is a retail convenience store that seeks to employ the beneficiary as a business development and management assistant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The record of proceeding on appeal contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [REDACTED] to “prepare & submit” the petition on behalf of the petitioner as its “agent.” In that capacity, [REDACTED] has submitted the Form I-290B, Notice of Appeal to the Administrative Appeals Office, appealing the director’s decision.

[REDACTED] is not, however, eligible to practice before Citizenship and Immigration Services (CIS). Only attorneys or the accredited representative of organizations recognized and accredited by the Board of Immigration Appeals, as defined at 8 C.F.R. §§ 103.2 and 292.1(a)(4), may represent petitioners or applicants in immigration proceedings. The regulations do not permit immigration services providers or agents, like [REDACTED], to appear as representatives before CIS.

Pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v), an appeal filed by an individual not entitled to file it must be rejected as improperly filed. [REDACTED] is an individual who is not entitled to file an appeal. Accordingly, the appeal in this case will be rejected as improperly filed.

The petition will also 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 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 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 July 26, 2007. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. However, Citizenship and Immigration Services did not receive the petitioner’s appeal in filing condition until September 24, 2007, 60 days after the decision was issued. Accordingly, the appeal was untimely filed.

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 Service 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 does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2). As the appeal was untimely filed, the appeal must be rejected.

The appeal is rejected as both improperly and untimely filed.

**ORDER:** The appeal is rejected.