

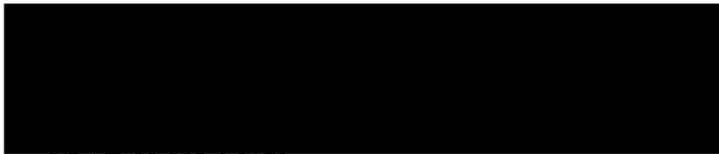
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



D2

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 01 2010

IN RE: Petitioner: [redacted]  
Beneficiary: [redacted]

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:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the instant nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

In the visa petition, the petitioner described itself as a pharmacy. To employ the beneficiary in a position designated as an information technology consultant/computer engineer position, the petitioner endeavors to have the beneficiary classified 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).

In a request for evidence it issued on February 9, 2009, the service center noted that, although the petitioner had indicated on the Form I-129 that it was attaching a Form G-28 Notice of Entry of Appearance to show that it was represented by counsel, the record contained no Form G-28. The service center requested, *inter alia*, that the petitioner either explain that omission or provide a G-28. The petitioner has not responded to that request.

The petition was initially denied as abandoned on March 31, 2009. Pursuant to a motion, the director reopened the matter on May 22, 2009. The director denied the visa petition again on May 22, 2009, based, in this second instance, on her finding that approval of the petition would extend the beneficiary's stay on H-1B status beyond the six-year limit generally imposed by section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), and that the beneficiary is not entitled to an exception to that six-year limit pursuant to AC21.

An attorney filed the appeal taken from the second decision of denial, which is the subject of today's decision. Although counsel claimed, on the Form I-290 appeal, to represent the petitioner, the record still contains no G-28, Notice of Entry of appearance, to show that the petitioner has consented to counsel's representation. As the record does not contain any indication that counsel represents a party entitled to file an appeal in this matter, the appeal is not properly filed and must be rejected. 8 C.F.R. § 103.3(a)(1)(iii)(B); 8 C.F.R. § 103.3(a)(2)(v)(A)(1); 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i).

Further, 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 of service of the unfavorable decision with the office that issued 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 being appealed on May 22, 2009. The director properly gave notice to the applicant that the applicant had 33 days to file the appeal. Although the attorney filing the appeal dated it June 22, 2009, it was not received by the director until Wednesday, June 25, 2009, 34 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. Even if the appeal had been filed by a party entitled to file it, it would be rejected as untimely.



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As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

**ORDER:** The appeal is rejected.