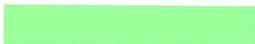


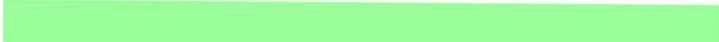


**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **DEC 27 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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)

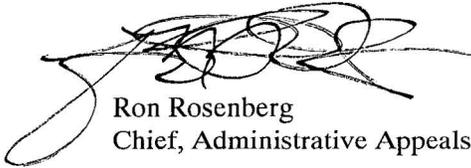
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The Appeal was Improperly Filed

Upon review, the AAO notes that the Form I-290B, Notice of Appeal or Motion, was not accompanied by a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. The Form G-28 submitted with the Form I-290B is a copy that was submitted with the Form I-129. It is dated, dated March 19, 2013, (prior to the director's decision), and indicates that it is in regard to the "I-129 (Change of Status)." Furthermore, it a version of the Form G-28 that expired, and, as of May 26, 2013, is longer accepted by USCIS.

In accordance with the regulation at 8 C.F.R. § 292.4(a), as well as the instructions to the Form I-290B, a "new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office." Title 8 C.F.R. § 292.4(a) further requires that the Form G-28 "must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS." This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010).

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) states, in part, the following:

If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed.

The record, however, does not contain a new, properly executed Form G-28 personally signed by both [REDACTED] (former counsel) and by an authorized official of the petitioning entity.

In accordance with 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii), the AAO sent Mr. [REDACTED] a facsimile on November 6, 2013, notifying him that a properly executed Form G-28, signed by him and the consenting affected party, must be submitted to the AAO within fifteen (15) calendar days. However, Mr. [REDACTED] failed to respond to this request within the allotted time period (or thereafter). Therefore, the AAO concludes that the appeal was improperly filed and must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1), which calls for rejection of an improperly filed appeal, where the person filing it is not entitled to do so.

The Appeal was Untimely Filed

Furthermore, the AAO notes that 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). A benefit request will be considered received by U.S. Citizenship and Immigration Services (USCIS) as of the actual date of receipt at the location designated for filing such a request. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the service center director issued the decision on Thursday, August 1, 2013. It is noted that the service center director properly gave notice to the petitioner of the timeframe to file the appeal. Neither the Immigration and Nationality Act (the Act) nor the pertinent regulations grant the AAO authority to extend this time limit.

The Form I-290B, Notice of Appeal or Motion, was signed by [REDACTED] (former counsel) and received by USCIS on Wednesday, September 4, 2013, which is 34 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 California Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the appeal as a motion and forwarded the matter to the AAO. Upon review, the appeal must also be rejected as it was untimely filed. It is an independent and alternative basis for rejection of the appeal.

Therefore, for the above stated reasons, the appeal must be rejected.¹

ORDER: The appeal is rejected.

¹ As the appeal will be rejected for the reasons discussed above, the AAO need not, and will not, address the additional deficiencies that it observes in the record of proceeding.