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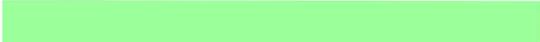
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **MAR 21 2013** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



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,

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely and improperly 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. 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the actual receipt of receipt at the designated filing location. 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the service center director issued the decision on December 20, 2011. It is noted that the service center director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

Although the Form I-290B is dated January 17, 2012, it was not received by the service center until January 27, 2012, or 38 days after the decision was issued. Accordingly, the appeal was untimely filed.

Included in the documents submitted on appeal is a piece of paper which states:

Dear USCIS Officer:

This appeal was mailed to USCIS via overnight on January 18, 2012 and was returned to us in error stating that the check was not enclosed.

The payment was enclosed but was overlooked.

Please accept this resubmission as timely filed.

The AAO's file also includes the packing envelope in which the service center received the petitioner's appeal. The written date on the packing label is January 18, 2012, however the electronic time stamp on the post office label states January 27, 2012. In addition, the public tracking information available online at <http://wwwapps.ups.com/WebTracking/track> indicates that the petitioner's envelope was delivered on January 27, 2012. The record contains no evidence that a previous submission was rejected, as indicated by the petitioner. Furthermore, the fact that the handwritten date on the packing label states January 18, 2012, while the electronic dates are January 27, 2012, calls into doubt the credibility of the petitioner's statement. The explanation reproduced above is therefore not considered credible.

Furthermore, the appeal submitted by the petitioner is improperly filed because counsel for the petitioner failed to submit a new G-28.

Effective March 4, 2010, the regulation at 8 C.F.R. § 292.4(a) requires that a "new [Form G-28] must be filed with an appeal filed with the [AAO]." Title 8 C.F.R. § 292.4(a) further requires that the new 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."

Without a new, valid, and fully executed Form G-28, signed by an official of the petitioning entity, authorizing counsel to represent the petitioner in the proceeding of the instant appeal, the AAO cannot consider counsel to be the petitioner's attorney of record with regard to the appeal currently before it.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i) provides in pertinent part that: "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." In addition, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1) provides that: "An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed."

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

ORDER: The appeal is rejected.