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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



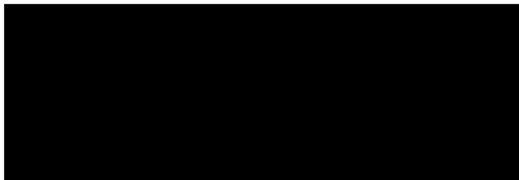
58.

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 10 2011

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF BENEFICIARY:



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 \$630. 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 Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal.

The petitioner filed the nonimmigrant visa petition seeking classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in athletics. The petitioner, a tennis academy, seeks to employ the beneficiary as a professional junior tennis coach for a period of three years.

The director denied the petition on October 27, 2009, concluding that the petitioner: (1) failed to establish that the beneficiary has achieved sustained national or international acclaim as a tennis coach; and (2) failed to establish that the beneficiary is coming to the United States to perform services relating to an event or events in his area of extraordinary ability.

Counsel subsequently filed the instant appeal on July 13, 2010. Counsel indicates on the accompanying Form G-28, Notice of Entry of Appearance as Attorney or Representative, that he represents the beneficiary. The petitioner is not named as a represented party.

U.S. Citizenship and Immigration Services (USCIS) regulations specifically limit the filing of an appeal to an affected party (the person or entity with legal standing) and/or to the party's attorney or representative authorized pursuant to 8 C.F.R. § 292. The meaning of affected party does not include the beneficiary of a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B).

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(I) provides that an appeal filed by a person or entity not entitled to file it is improperly filed and must be rejected. Accordingly, the appeal will be rejected.

In addition, we note 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 must file the complete appeal with the office where the unfavorable decision was made 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). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a USCIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on October 27, 2009. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal and properly instructed the petitioner to submit the appeal to the California Service Center. Counsel for the beneficiary filed the appeal on July 13, 2010, more than eight months after the director issued the adverse decision. Consequently, the appeal in this matter 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. Thus, the appeal was not timely filed and must be rejected on these additional grounds pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).¹

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

ORDER: The appeal is rejected.

¹ 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 as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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 service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). However, as the untimely appeal was also improperly filed by the beneficiary's representative, the director was not required to consider whether it met the requirements of a motion.