



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF G-B-&B-

DATE: MAR. 23, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a restaurant, seeks classification of the beneficiary as an individual of extraordinary ability. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director of the Texas Service Center denied the petition and we dismissed the subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. Upon review, we will deny the motions as untimely filed.

A motion must be filed within 33 calendar days of the date that the unfavorable decision was served by mail. 8 C.F.R. §§ 103.5(a)(1)(i); 103.8(b). The filing date is the day USCIS receives the motion at the designated filing location, not the date the Petitioner mailed the motion. 8 C.F.R. § 103.2(a)(7)(i).

On December 29, 2017, we summarily dismissed the Petitioner's appeal and served the unfavorable decision by mail. The decision stated that the Petitioner may file a motion within 33 days. USCIS received the motion on February 21, 2018, which is 54 days after the service date of the unfavorable decision. On motion, the Petitioner asserts that the untimeliness should be excused because a copy of the decision was not mailed to the Petitioner's attorney. However, service records indicate that the Petitioner did not file a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. Although the Petitioner's attorney previously submitted correspondence to our office, he did not submit a Form G-28 and the submission of correspondence by an attorney does not create a duty for us to notify the Petitioner that there is not a Form G-28 on record. A copy of the appeal decision was mailed to the Petitioner's address of record and could have been forwarded to the attorney by the Petitioner at any time. Therefore, we do not find that the delay in filing was reasonable or beyond the Petitioner's control. Accordingly, we are denying the motions as untimely filed.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of G-B-&B-*, ID# 1481340 (AAO Mar. 23, 2018)