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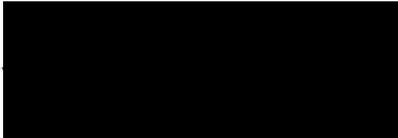
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042.
Washington, DC 20529



U.S. Citizenship
and Immigration
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File: WAC 03 136 51562 Office: CALIFORNIA SERVICE CENTER Date: JUN 15 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely 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 must file the complete appeal 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).

The record indicates that the director issued the decision on November 5, 2004. The instructions on the Form I-290B direct individuals to file their appeal with the office that issued the unfavorable decision, in this case the California Service Center. The instructions emphasize that appeals should not be sent directly to the AAO. In this case, the director's decision also stated "[t]he petitioner must submit . . . an appeal to THIS OFFICE with a filing fee of \$110.00. Do NOT send the appeal directly to the AAO." Despite these instructions, the petitioner filed her Form I-290B directly with the AAO. The AAO returned her application with a letter directing her to file the appeal with the California Service Center. The petitioner's appeal was then received by the California Service Center on December 15, 2004, or 40 days after the director's decision was issued. The appeal was thus 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 service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

The appeal was untimely filed and consequently must be rejected.

ORDER: The appeal is rejected.