



U.S. Citizenship  
and Immigration  
Services



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File: [REDACTED] Office: VERMONT SERVICE CENTER  
EAC 02 207 53979

Date: [REDACTED]

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:



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.

*Mari Johnson*

*S* Robert P. Wiemann, Director  
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 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 of 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 May 23, 2003. The decision was mailed to the petitioner at his address of record provided on the Form I-140 petition. In this decision, the director properly gave notice to the petitioner that he had 33 days to file the appeal. Counsel dated the appeal March 30, 2004 and it was received by Citizenship and Immigration Services on April 5, 2004, or more than 10 months after the decision was issued. Accordingly, the appeal was untimely filed.

On appeal, counsel asserts that the "Immigration Office" that prepared the petitioner's petition closed down its mailbox, which the petitioner had used for his residential address on the Form I-140. Counsel further states that the individual running the office left the area. According to counsel, the petitioner acquired the director's decision "recently" when someone forwarded it to him.

The Form I-140 petition, Part 9, requires the signature of the person preparing the form if other than the petitioner. The petitioner's Form I-140 is blank at Part 9. The record does not contain a Form G-28 Notice of Appearance from any representative prior to counsel's G-28 submitted on appeal. As stated above, the decision was mailed to the street address provided on the petition.

Regardless, while the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a late motion may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner, there is no similar provision relating to appeals. Thus, we cannot consider the petitioner's explanation for the untimely filing of the appeal. 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.

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

**ORDER:** The appeal is rejected.