



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 02 131 50114

Office: VERMONT SERVICE CENTER

Date: **OCT 26 2009**

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)

ON 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

R Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The regulation at 8 C.F.R. § 103.2(a)(1) states, in pertinent part:

Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.

Part 7 of the Instructions for Form I-290B, Notice of Appeal to the Administrative Appeals Office, states: "An appeal that is not signed or is not accompanied by the proper fee will be rejected with a notice that the appeal is deficient."

The regulation at 8 C.F.R. § 103.2(a)(2) states, in pertinent part:

An applicant or petitioner must sign his or her application or petition. . . . By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

The regulation at 8 C.F.R. § 103.2(a)(7) states, in pertinent part:

An application or petition received in a Service office shall be . . . regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

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). 8 C.F.R. § 1.1(h) explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

The record indicates that the director issued the decision on April 20, 2004. It is noted that the director properly gave notice to the petitioner that she had 33 days to file the appeal. The petitioner submitted the Form I-290B on May 22, 2004. However, the appeal was not accepted because it had not been properly filed.

On June 1, 2004, the Service Center issued a Rejection Notice to the petitioner stating: "The application or petition cannot be accepted because it has not been properly signed."

On June 9, 2004, the petitioner submitted a properly signed Form I-290B.

The petitioner's appeal in this case was not properly filed until June 9, 2004, or 50 days after the decision was issued. It must therefore be rejected as 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.

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

ORDER: The appeal is rejected.