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U.S. Citizenship
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Services

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File: [Redacted]
EAC 04 102 51094

Office: VERMONT SERVICE CENTER

Date: **MAR 07 2006**

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.

2 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant 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 January 26, 2005. It is noted that the director properly gave notice to the petitioner¹ that it had 33 days to file the appeal. Although the appeal is dated February 26, 2005, it was received by Citizenship and Immigration Services (CIS) on March 2, 2005, or 35 days after the decision was issued. Accordingly, the appeal was 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.

¹ Although the petitioner has a January 9, 2004 Form G-28, Notice of Entry of Appearance as Attorney or Representative, on file indicating that he was represented by an attorney, the AAO notes that this representative was suspended by the District of Columbia Bar for nonpayment of dues according to the bar's website, www.dccbar.org (accessed February 24, 2006).