



U.S. Citizenship
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Services

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File:



Office: NEBRASKA SERVICE CENTER

Date: NOV 18 2005

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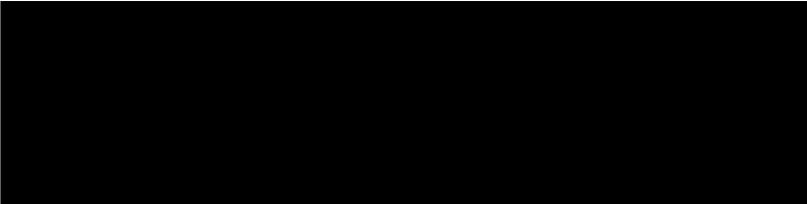
IN RE: Petitioner:

Beneficiary:



Petition: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 August 24, 2005. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Counsel dated the appeal September 21, 2005 and indicated that he would file a brief and/or additional evidence within 30 days. As of this date, this office has received nothing further.

Citizenship and Immigration Services (CIS) initially received the appeal on September 22, 2005. The Form I-290B, however, was unsigned. The regulation at 8 C.F.R. § 103.2(a)(7) indicates that an application or petition shall be regarded as properly filed when stamped as received "if it is properly signed and executed." As such, the director properly rejected the appeal. The appeal was received by CIS properly filed on October 4, 2005, or 41 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.