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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  
Services

B4

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUN 01 2005

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based petition. The Administrative Appeals Office (AAO) summarily dismissed the subsequently filed appeal. An attorney for the beneficiary submits a letter and an appeal brief dated January 31, 2001 and requests that the AAO consider the appeal brief previously submitted. The "motion" will be rejected as untimely filed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of 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 failure to file before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The last decision of the AAO was issued on October 1, 2004. The motion was filed on November 22, 2004, more than 52 days after the AAO decision was issued.

On motion, the petitioner has not requested that the failure to file the motion within the 30-day time period be excused.

As a matter of discretion, the applicant's failure to file the motion within the period allowed will not be excused as either reasonable or beyond the control of the applicant. Accordingly, the motion will be rejected as untimely filed.

Without reopening this matter, the AAO notes that the record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed on behalf of the petitioner. The "party affected" in visa petition matters is the petitioner, and the beneficiary does not have standing to move to reopen the proceedings. *Matter of Dabaase*, 16 I&N Dec. 720 (BIA 1979). Further, although an attorney asserts that the January 31, 2001 appeal brief was re-submitted October 27, 2004, the record contains no evidence establishing that fact. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Finally, the January 31, 2001 appeal brief was submitted in support of a petition that was denied December 11, 2000. The director's denial in this matter is dated October 7, 2003. The AAO notes these additional deficiencies as well as the failure to timely submit a motion.

**ORDER:** The motion is rejected as untimely filed.