



U.S. Citizenship
and Immigration
Services

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BA

File:

[REDACTED]
SRC 05 256 51868

Office: TEXAS SERVICE CENTER

Date: DEC 06 2006

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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)

IN BEHALF OF PETITIONER:

[REDACTED]
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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The matter is currently 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 appeal 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).

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 record indicates that the director issued the decision on April 13, 2006. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal and specifically stated that the appeal must be filed at the Texas Service Center. Counsel¹ apparently attempted to comply with those instructions by submitting the appeal to the address listed at the top right hand corner of the cover page of the director's decision. However, proper filing instructions, which are found at the U.S. Citizenship and Immigration Service's (CIS) website, provide the applicant with the correct mailing address for appeals and motions. The address used by counsel was not the correct address. Therefore, counsel's initial submission was returned. Counsel then attempted to file the appeal directly to the AAO where the appeal was received on May 15, 2006. The AAO promptly returned the appeal to the petitioner with a notice explaining that the AAO does not accept or process applications and instructed the petitioner to view the filing instructions provided at the USCIS website. Although counsel ultimately complied with those instructions, the appeal was not properly received by CIS until May 22, 2006, or 39 days after the decision was issued. Therefore, the appeal was untimely filed.

Counsel cites 8 C.F.R. § 103.5(a), asserting that the AAO has discretion to accept motions and appeals even when untimely filed. Counsel's argument, however, is incorrect. While 8 C.F.R. § 103.5(a)(1)(i) specifically allows for the AAO's discretion with regard to untimely filed motions over which it has jurisdiction, there are no regulations that allow the AAO to use its discretion in accepting untimely filed appeals. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) states that an appeal which is not filed within the time allowed must be rejected as improperly filed. Accordingly, the appeal in the instant case will 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.

¹ The Notice of Entry of Appearance as Attorney or Representative (Form G-28) submitted by counsel, Mario Gonzalez, was not signed by the petitioner. As such, counsel's appearance may not be entered on behalf of the petitioner, and prior counsel's representation may not be withdrawn on that basis.

ORDER: The appeal is rejected as untimely filed.