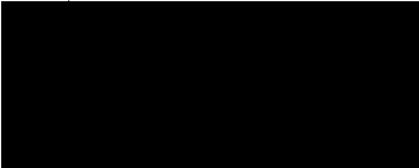


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**U.S. Citizenship
and Immigration
Services**

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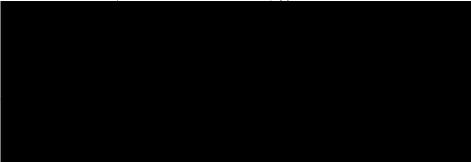


FILE: SRC 03 118 51962 **Office:** TEXAS SERVICE CENTER **Date:** JUL 02 2004

IN RE: **Petitioner:** [Redacted]
 Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON 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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is an educational institution. It seeks to employ the beneficiary permanently in the United States as an instructor in the theory and practice of computer programming pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as member of the professions holding an advanced degree. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined the petitioner had failed to meet the job experience requirement set forth in the labor certification.

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 October 14, 2003. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal.

The petitioner submitted the Form I-290B, Notice of Appeal, on November 17, 2003. However, the appeal was not accepted because it had not been properly filed. On November 19, 2003, the Service Center issued a notice requesting proper payment of the Form I-290B filing fee. On December 1, 2003, the petitioner submitted the proper payment.

The petitioner's appeal in this case was not properly filed until December 1, 2003, or 48 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.