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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

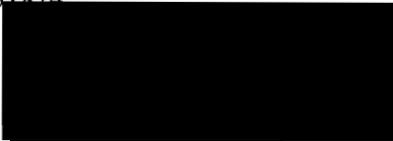
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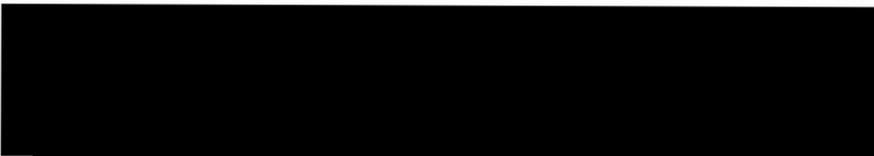
File: [REDACTED] Office: TEXAS SERVICE CENTER Date: NOV 14 2006
SRC 05 149 51824

IN RE: Petitioner:
Beneficiary:



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)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 September 29, 2005. It is noted that the director properly gave notice to the petitioner that he had 33 days to file the appeal. Although counsel dated the appeal November 2, 2005, it was received by Citizenship and Immigration Services (CIS) on November 7, 2005, or 39 days after the decision was issued. Accordingly, the appeal was untimely filed.

An adhesive note on the appeal requests that it be considered timely due to counsel's office closure due to Hurricane Wilma. 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.

Moreover, on appeal, counsel merely stated that he would submit a brief and/or evidence to the Administrative Appeals Office (AAO) within 30 days. As stated above, counsel dated the appeal November 2, 2005. As of this date, more than one year later, the AAO has received nothing further. The regulation at 8 C.F.R. § 103.3(a)(1)(v), provides that an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Counsel here has not specifically addressed the reasons stated for denial and has not provided any additional evidence. He has not even expressed disagreement with the director's decision. Thus, even if the appeal were considered timely, it would be summarily dismissed.

ORDER: The appeal is rejected.