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

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: WAC 02 266 53626 Office: CALIFORNIA SERVICE CENTER Date:

AUG 12 2003

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director considered the petitioner's response to the request for evidence, dated December 17, 2002, and concluded that the petitioner did not have the ability to pay the proffered wage at the priority date and continuing until the beneficiary obtains lawful permanent residence. The director denied the petition in a notice of decision (NOD) dated March 24, 2003.

Under 8 C.F.R. § 103.3(a)(2)(i), the time for appeal is 30 days from the service of the NOD. An additional three (3) days are allowed for the service by mail herein. 8 C.F.R. § 103.5a(c)(1).

The director served the NOD on March 24, 2003, but received the appeal more than 33 days afterwards, on April 30, 2003.

Provisions of 8 C.F.R. § 103.3(a)(2)(v) state:

- (B) *Untimely appeal-- (1) Rejection without refund of filing fee.* An appeal which is not filed in the time allowed must be rejected as improperly filed. In such a case, any filing fee the Bureau [formerly the Service or INS] has accepted will not be refunded.

Counsel, candidly, makes only one argument, namely, that all businesses have been affected by the economy. The untimely appeal does not meet the requirements of a motion to reopen or reconsider on the merits under 8 C.F.R. § 103.3(a)(2)(v)(B)(2). It offers no new facts or affidavits to establish them. 8 C.F.R. § 103.5(a)(2). It does not show that the NOD incorrectly applied the law or Bureau policy, based on the evidence available at the time of the NOD. 8 C.F.R. § 103.5(a)(3).

The petitioner did not file the appeal within the time allowed, and it must be rejected as an improperly filed appeal.

ORDER: The appeal is rejected.