B10

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

File: [redacted] SRC-02-272-52904 Office: TEXAS SERVICE CENTER Date: NOV 26 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Texas Service Center, denied the immigrant 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 May 8, 2003 to the attorney of record based upon the address information provided on visa petition and Form G-28, Notice of Entry of Appearance as Attorney or Representative in the record of proceeding. The visa petition does not contain the petitioner's address, rather it lists counsel's name and contact information. Apparently the decision was returned to CIS as undeliverable and the director made an additional effort to mail the decision on May 27, 2003. Counsel updated his contact information with CIS on June 18, 2003.

Regardless of counsel's mistake in failing to update his contact information with CIS, the director properly issued its decision on May 8, 2003 and made two attempts to provide the decision to the petitioner through counsel with the information CIS had available to it at that time.

In her decision, it is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Counsel's appeal is dated June 24, 2003, it was received by CIS on July 2, 2003, or 55 days after the decision was issued. Accordingly, the appeal was 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.