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U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 08 2004

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

PETITION: 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)

ON 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.

for Robert P. Wiemann, Director  
Administrative Appeals Office

PUBLIC COPY

**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 evidence, all of which was submitted in response to a request for evidence dated June 25, 2002, 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, and denied the petition in a notice of decision (NOD) dated September 5, 2002.

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 if service of the decision is by mail. 8 C.F.R. § 103.5a(b).

The director issued the NOD on September 5, 2002. The thirty-three day period after that date expired on October 8, 2002. The record indicates that the notice of appeal was submitted initially on October 7, 2002, but was returned to counsel on October 9, 2002 for lack of a signature on the Form I-290B Notice of Appeal. Counsel did not resubmit the notice of appeal, with signature, until October 22, 2002, fourteen days after the appeal deadline of October 8, 2002. Therefore, counsel's resubmission of the I-290B was untimely.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B) states, "*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 [CIS] has accepted will not be refunded."

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.