

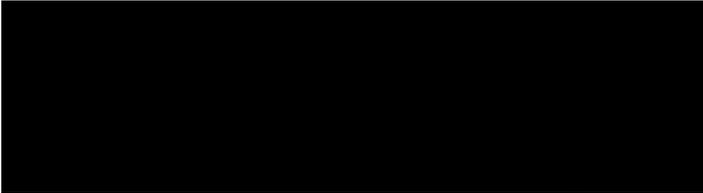
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



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



B6

FILE: EAC 02 187 53245 Office: VERMONT SERVICE CENTER

Date: APR 19 2005

IN RE: Petitioner:
Beneficiary:



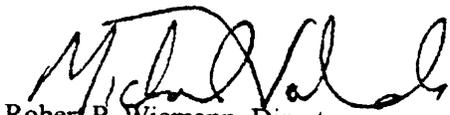
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 June 23, 2003. The director properly gave notice to the petitioner that it had 33 days to file the appeal. Although counsel dated the letter that enclosed his Form I-290B notice August 26, 2003, Citizenship and Immigration Services (CIS) effectively received the appeal on September 29, 2003, or 98 days after the decision was issued¹. 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.

Separately, this office notes that on the Form I-290B notice of appeal, counsel indicated that he would submit a brief and/or evidence to the AAO within 30 days. As of this date, more than 20 months later, the AAO has received nothing further. Counsel has not specifically addressed the reasons stated for denial, provided any additional evidence or expressed any disagreements with the director's decision.

The regulation at 8 C.F.R. § 103.3(a)(1)(v), states 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. However, inasmuch as the appeal was untimely filed as well, the appeal must be rejected.

The appeal must therefore be rejected.

ORDER: The appeal is rejected

¹ The record shows that on September 3, 2003, the director rejected an August 27, 2003 filing because it lacked the required \$110 filing fee. On September 17, 2003, the director rejected a September 12, 2003 re-filing because the notice of appeal carried only a photocopied signature of counsel. The director did accept the September 29, 2003 filing of the notice of appeal.