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**U.S. Citizenship
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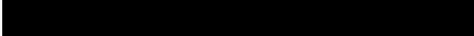


B6

FILE: 
WAC 02 150 51924

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 29 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 immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) affirmed the director's decision on February 24, 2004. The matter is now before the AAO based upon a letter sent to the California Service Center by counsel that stated, "... This letter is in response to your dismissal letter dated February 24, 2004."¹ Counsel's letter was received on April 23, 2004, 60 days after the AAO decision.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party,² in order to properly file an appeal, must file the complete appeal within 30 days 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).

Accordingly, the appeal was untimely filed. The record indicates that the AAO issued the decision on February 24, 2004. The director properly gave notice to petitioner and to petitioner's counsel that the petitioner had 33 days to file the appeal. Citizenship and Immigration Services (CIS) received the appeal on April 23, 2004, 60 days after the decision was issued. The appeal, therefore, was untimely filed.³

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.

¹ Counsel asserts that the decision of the AAO was "... delivered to one of the Petitioner's neighbors..." with no other explanation or substantiation why the petitioner's response to the AAO decision was not timely filed by either petitioner or petitioner's counsel, who also received the AAO decision by mail.

² Petitioner is variously named in the record of proceedings as [REDACTED], and [REDACTED].

³ Had counsel filed the appeal in time, it would still be summarily dismissed since the petitioner failed to identify specifically any erroneous conclusions of law or statement of fact for the appeal.