



U.S. Citizenship
and Immigration
Services

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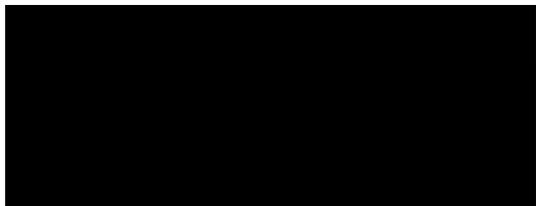
Office: NEBRASKA SERVICE CENTER

Date: FEB 02 2009

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:



PUBLIC COPY

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 properly to 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 after the service of the unfavorable decision. If the decision was mailed, the regulations allow an additional three (3) days for mailing. *See* 8 C.F.R. § 103.5a(b). Thus, the appeal must be filed within 33 days.

The record indicates that the director issued the decision on June 13, 2001. The director properly notified the petitioner that it had 33 days to file the appeal. Although counsel dated the appeal July 12, 2001, Citizenship and Immigration Services (CIS) received it on July 17, 2001, more than 33 days after the director issued the decision. Other regulations define the word “day” to allow the taking of any action on the next business day after Saturday, Sunday, or a legal holiday. *See* 8 C.F.R. § 1.1(h). The 33 days for appeal expired on Sunday, July 15, 2001, and this regulation authorized the filing of this appeal on Monday, July 16, 2001. CIS did not receive it, however, until July 17, 2001. Therefore, 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 who made the last decision in the proceeding has jurisdiction over a motion, 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, it must be rejected.

ORDER: The appeal is rejected.