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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

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date JAN 12 2005

EAC 01 224 55467

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)

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.

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.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party, 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 director issued the decision on February 20, 2002. The director properly gave notice to the petitioner that it had 30 days to file the appeal. Citizenship and Immigration Services (CIS) received the appeal on April 26, 2002, 34 days after the decision was issued. The appeal, therefore, was untimely filed.

Counsel requests, in a letter dated March 25, 2002, that an additional day be added to the 33 days ordinarily accorded to a petitioner to file an appeal because a death in the family necessitated counsel's absence for more than one week. The regulations, however, contain no provision for granting such a request, and the request is denied.

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.