



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

B6

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

[Redacted]

JAN 24 2005

PETITION: Immigrant petition for Alien Worker as an Other Worker or Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Director
Administrative Appeals Office

[Redacted]

[Redacted]

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner is a private household. It sought to permanently employ the beneficiary in the United States as a housekeeper. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had failed to establish that it had the continuing financial ability to pay the proffered wage and denied the petition accordingly.

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 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 May 2, 2003. The appeal was received by Citizenship and Immigration Services (CIS) on June 5, 2003, or 34 days after the decision was issued.¹ 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.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ The appeal was filed by the individual petitioner. It is noted that the record contains two Form G-28s, Notice of Appearance as Attorney or Representative. Neither G-28 will be recognized. The most recent one is dated June 4, 2003, but is improperly completed because it fails to contain the attorney's original signature. The earlier G-28, dated September 9, 2002, was filed by an individual identifying himself only as a paralegal. The regulation at 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter. There is no evidence in the record establishing that the individual who filed the earlier G-28 is an accredited representative. As a courtesy, copies of this decision will be provided to these individuals.