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



U.S. Citizenship
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Services

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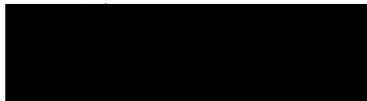


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FILE: WAC 03 008 53128 Office: CALIFORNIA SERVICE CENTER

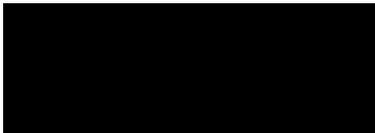
Date: MAR 11 2005

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 employment based immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a sign-making firm. It sought to permanently employ the beneficiary in the United States as a metal sign fabricator. 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 had failed to adequately establish that the beneficiary possessed sufficient employment experience to satisfy the terms of the certified position.

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 to deny the petition on October 10, 2003. The appeal was improperly filed on November 6, 2003 by the beneficiary. The beneficiary is not the affected party in the proceeding and has no standing to file an appeal. 8 C.F.R. § 3.3(a)(1)(iii). The appeal was properly rejected by the director. 8 C.F.R. § 103.3(a)(2)(v).

Thereafter, the petitioner filed the appeal. It was received by Citizenship and Immigration Services (CIS) on November 20, 2003, or 41 days after the decision was issued. Accordingly, the appeal was untimely filed.

It is the petitioner's burden to file a timely appeal. An untimely appeal shall be rejected as improperly filed. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

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.

Accordingly, the petitioner's appeal is rejected as untimely filed.

ORDER: The petitioner's appeal is rejected.