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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



Ble

File: [REDACTED]
EAC-03-062-51983

Office: VERMONT SERVICE CENTER

Date: MAY 20 2005

In re: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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 immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

An entity called Anka Consulting has listed itself as a contact in this proceeding. However, no Form G-28, Notice of Entry of Appearance of Attorney or Representative, is contained in the record of proceeding. As such, Anka Consulting will not be recognized by the AAO or provided a copy of this decision. See 8 C.F.R. §§ 292.4 and 292.5.

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 of 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 September 15, 2003. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Although the beneficiary dated the appeal October 17, 2003, it was received by Citizenship and Immigration Services (CIS) on October 21, 2003, or 36 days after the decision was issued. 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.

The AAO notes that if the appeal would not be rejected for being untimely, it would otherwise be rejected because it was not properly filed by a party with standing in accordance with 8 C.F.R. § 103.3(a)(2)(v)(A)(1). CIS regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B).

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

ORDER: The appeal is rejected.