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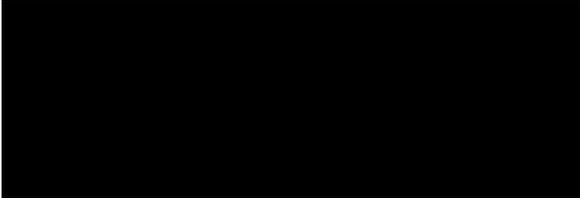
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529

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U.S. Citizenship and Immigration Services

*Ble*



FILE: WAC 02 150 50754 Office: CALIFORNIA SERVICE CENTER

Date: **MAY 25 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)

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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California 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.

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 January 30, 2004. The director of Vermont Service Center properly gave notice to petitioner's counsel that the petitioner had 33 days to file the appeal. Citizenship and Immigration Services (CIS) received the appeal<sup>1</sup> on March 8, 2004, 39 days after the decision was issued. The appeal, therefore, 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.

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<sup>1</sup> The appeal was sent twice. It was originally untimely received by the Service on March 4, 2004, and then rejected since no filing fee was enclosed, and returned to petitioner, then sent once again by petitioner and received by CIS on March 8, 2004. The AAO notes that even if the first mailing of the appeal had been filed with the proper fee, it would have still been received 34 days after the decision to deny the petition.