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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

134

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

AUG 16 2006

WAC 02 282 54897

INRE:

Petitioner:

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:

[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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the third preference immigrant visa petition. The Administrative Appeals Office dismissed a subsequent appeal. The matter is now before the Administrative Appeals Office (AAO) on a motion. The motion will be rejected as untimely filed.

During the pendency of the instant petition the petitioner has retained two attorneys. A Form G-28 Notice of Entry of Appearance filed with the appeal supercedes all other appearances in the record and designates the instant counsel as the petitioner's attorney of record. All representations will be considered, but the decision will be furnished only to the petitioner and its current counsel.

In order to properly file an appeal or motion, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal or motion within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal or motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the AAO issued the decision on June 18, 2004. Citizenship and Immigration Services (CIS) received the instant motion on January 25, 2005, 221 days after the decision was issued. Accordingly, the motion was untimely filed.

Counsel states,

[The petitioner's owner's] previous attorney informed [the petitioner's owner of the decision of denial] after the time allowance[,] which is 30 days from the posted date of denial notice. Disappointed[, the petitioner's owner] withdrew his case and retained us to represent. (sic) As a result we are filing at present time.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *af'd*, 857 F.2d 10 (1st Cir. 1988).

Although present counsel implied that the appeal period should be extended based on previous counsel's ineffective assistance he did not provide the evidence required by *Matter of Lozada*, *supra*. No extension is appropriate.

Accordingly the motion was untimely filed and must be rejected.

**ORDER:** The motion is rejected.