

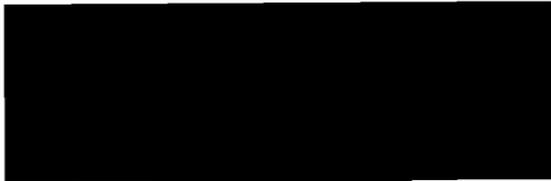
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**U.S. Citizenship
and Immigration
Services**

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File: [Redacted]
EAC 04 232 53364

Office: VERMONT SERVICE CENTER

Date: JUN 27 2006

In re: Petitioner:
 Beneficiary:



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

IN 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, Chief
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.

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 November 2, 2005. 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 December 23, 2005, it was received by Citizenship and Immigration Services (CIS) on January 6, 2006, or 39 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 director rejected the petitioner's Form I-290B earlier, which bears canceled date stamp of December 27, 2005. The record also includes a Form I-797, dated January 6, 2006, returning the I-290B for lack of a \$385 filing fee as "not properly filed."