

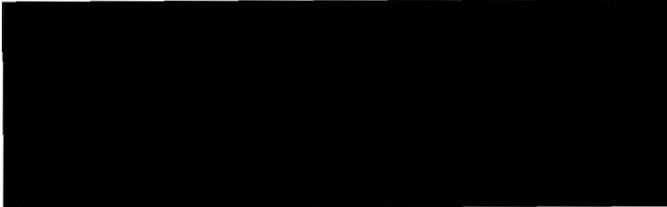


U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 021 52893 Office: CALIFORNIA SERVICE CENTER Date **MAR 09 2006**

IN RE: Petitioner:
Beneficiary:



PETITION: 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:

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

The petitioner is an acute care hospital. It seeks to employ the beneficiary permanently in the United States as a registered nurse. As required by statute, an uncertified Application for Alien Employment Certification, Form ETA 750, approved by the Department of Labor, accompanies the petition. The director determined that the petitioner had not established that:

- The beneficiary met the education and experience qualifications specified in the ETA 750; The petitioner had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition; or that
- The position qualified for Schedule A certification.

The director denied the petition accordingly.

Under 8 C.F.R. § 103.3(a)(2)(i), the time for appeal is 30 days from the service of the Notice of Decision. An additional three (3) days are allowed for the service by mail herein. 8 C.F.R. § 103.5a(b).

The director issued the Notice of Decision on September 30, 2004, addressed to the petitioner, [REDACTED] [REDACTED] The director received the appeal more than 33 days afterwards, on November 8, 2004.¹

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states, with reference to Citizenship and Immigration Services (CIS), formerly the Service or the INS:

Untimely appeal-- (1) Rejection without refund of filing fee. An appeal which is not filed in the time allowed must be rejected as improperly filed. In such a case, any filing fee [CIS] has accepted will not be refunded.

The petitioner did not file the appeal within the time allowed, and it must be rejected as an improperly filed appeal.

ORDER: The appeal is rejected.

¹On appeal the petitioner submits a photocopy of an envelope from the director postmarked October 7, 2004, that is addressed to [REDACTED] the director of the [REDACTED] New York, NY 10019, on which appears the handwritten notation, "received 10/12/04 2:30 p.m." It is noted, however, that CIS electronic records reflect that the director mailed the notice of decision on September 30, 2004.