

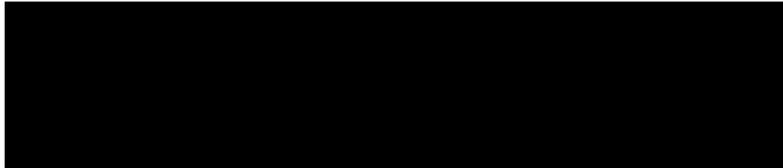
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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC-03-257-53275

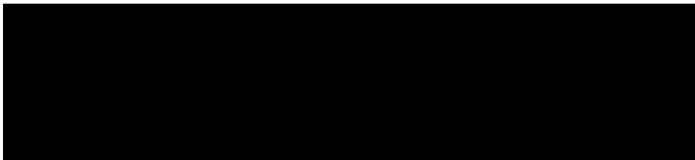
Office: VERMONT SERVICE CENTER

Date: MAY 02 2006

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for Alien Worker as an Other Worker 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, Chief
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and 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 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 regulation at 8 C.F.R. § 1.1(h) states:

The term *day* when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

The record indicates that the director issued the decision on October 5, 2004. The director gave notice to the petitioner that it had 33 days to file the appeal.¹ The 33-day period expired on November 7, 2004, a Sunday. By operation of the regulation at 8 C.F.R. § 1.1(h) the appeal period was extended until Monday, November 8, 2004.

The instructions on the I-290B Notice of Appeal form state in pertinent part as follows:

You must file you appeal with the United States Citizenship and Immigration Services (USCIS) office which made the unfavorable decision within 30 calendar days after service of the decision (33 days if your decision was mailed). The date of service is normally the date of the decision. Do *not* send your appeal directly to the Administrative Appeals Unit (AAU).

Instructions to Form I-290B, Section 1. Filing (Rev. 01/04/91).

The instructions to the Form I-290B are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1).

In the instant petition, the I-290B Notice of Appeal was initially submitted directly to the Administrative Appeals Office (AAO). It was received by the AAO on November 3, 2004. The I-290B was not accepted by the AAO, and the I-290B and the accompanying money order or check for the \$110.00 filing fee were returned to counsel by the AAO, with a letter dated November 4, 2004. The letter explained the correct filing procedure, as is stated in the instructions to the Form I-290B.

The I-290B was then sent by the petitioner to the Vermont Service Center. It was received by the Vermont Service Center on November 10, 2004, according to a receipt stamp on the I-290B.

The date of November 10, 2004 was two days after the end of the appeal period, which, as noted above, was November 8, 2004. Accordingly, the appeal was untimely filed.

¹ The petitioner's name on the I-140 petition ends with the characters "FEIN#," but on its tax returns the petitioner's name ends with the abbreviation "Inc."

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.