



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
SRC 03 145 52461

Office: TEXAS SERVICE CENTER Date: OCT 10 2008

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

PETITION: Immigrant petition for Alien Worker as an Other, Unskilled 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 Director, Texas 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 December 3, 2004. The director properly gave notice to the petitioner that it had 33 days to file the appeal. Although counsel dated the appeal¹ January 4, Citizenship and Immigration Services (CIS) received the appeal on January 7, 2005, 36 days after the decision was issued.² 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 Counsel selected on the appeal form the statement that indicated that counsel would be submitting a brief or additional evidence within 30 days, however, none was submitted. Counsel's statement on appeal contains no specific assignment of error, or introduces new evidence relative to the issues raised in the statement of appeal. Alleging that the director erred in some unspecified way is an insufficient basis for an appeal. 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." Counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal.

² The Texas had initially rejected the filing after its receipt on January 7, 2005, but then accepted it on January 20, 2005. The January 7, 2005 filing was properly addressed, and, for purposes of this Order is considered the date of acceptance.