

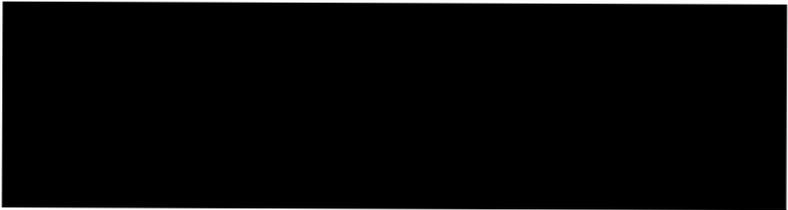
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U.S. Department of Homeland Security  
20 Mass Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship and Immigration Services

**PUBLIC COPY**



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FILE: EAC 05 017 50047 Office: VERMONT SERVICE CENTER

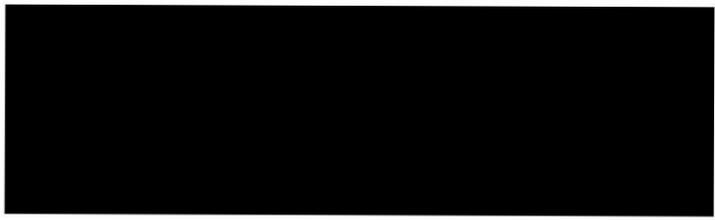
Date: **OCT 20 2006**

IN RE: Petitioner:  
Beneficiary:



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:



**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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for review as a motion to reopen.

The petitioner, a wholesale wig and hairpiece firm, sought to permanently employ the beneficiary in the United States as a secretary. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the petitioner had failed to establish its continuing financial ability to pay the proffered wage and denied the petition on March 22, 2005.

The appeal was not properly filed until May 2, 2005.

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 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 March 22, 2005. The properly filed appeal<sup>1</sup> was not received by Citizenship and Immigration Services (CIS) until May 2, 2005, or 41 days after the decision was issued. 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).

Here, it is not clear whether the director reviewed the late appeal as a motion, before the record was forwarded to the AAO. For that reason, the case will be remanded to the director for consideration as a motion to reopen.

**ORDER:** The late-filed appeal is remanded to the director for consideration as a motion to reopen.

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<sup>1</sup> The appeal was initially submitted without an authorized signature.