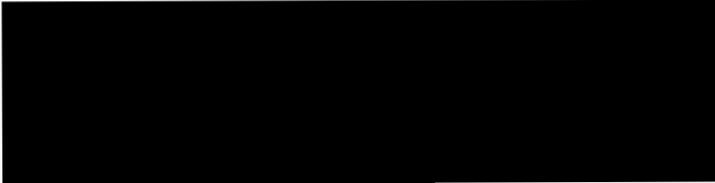




U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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B/S

FILE: [Redacted]
EAC 03 027 54061

Office: VERMONT SERVICE CENTER

Date: **OCT 24 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 Director, Vermont Service Center, denied the immigrant visa petition on August 11, 2004. The petitioner appealed the director's decision. The director dismissed the Motion to Reopen/Reconsider, as it was not submitted within 33 days of the date of the director's decision dated August 11, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeals. The prior decision of the director dated August 11, 2004, is affirmed. The appeals are rejected.

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 August 11, 2004. The director properly gave notice to the petitioner that it had 33 days to file the appeal. Counsel submitted documents to the director on September 10, 2004. Although the cover letter indicated that a Form I-290B was included with an affidavit from the petitioner and a letter from an accountant, no Form I-290B was included. The director returned the documents and filing fee and stated, "If you wish the attached letter be considered as your Motion to reopen/Reconsider please annotate the letter, or a statement that counsel desired that the document submittal be considered as a Motion to Reopen/Reconsider." Subsequently counsel by letter dated September 23, 2004, and received on that date, sent documents with an unsigned Form I-290B now dated September [no day date given] 2004 and with a cover letter indicating that the submittal be considered as a Motion to Reopen/Reconsider.

Citizenship and Immigration Services (CIS) received the motion to reopen on September 23, 2004, 44 days after the decision was issued. Accordingly, it was untimely filed.

Subsequently counsel filed two Motions to Reopen the director's decision dated August 11, 2004 as received December 14, 2004, and April 22, 2005. The last appeal was received 255 days after the decision was issued. Both appeals were 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 appeals were untimely filed, the appeals must be rejected.

ORDER: The appeals are rejected.