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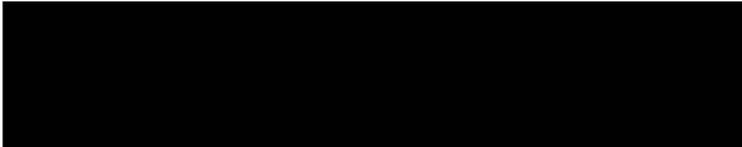
File: [REDACTED]
SRC 05 201 50327

Office: TEXAS SERVICE CENTER Date: FEB 01 2007

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

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to
Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

IN 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 of the Texas Service Center denied the preference visa petition that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The director denied the petition on October 22, 2005. The director's decision identified the proper filing fee for the appeal as \$385.00. This fee increase became effective on September 28, 2005. *See* 70 Fed. Reg. 50954, 50954 (Aug. 29, 2005), found at <http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=04921783362+1+0+0&WAISaction+retrieve>; 8 C.F.R. § 103.7.

The record indicates that on November 21, 2005, the director notified the petitioner that the fee for the appeal is \$385. The Texas Service Center received the resubmitted Form I-290B with the proper \$385.00 filing fee on November 29, 2005, along with counsel's cover letter, dated November 28, 2005.

The regulation at 8 C.F.R. § 103.3(a)(2) requires an affected party to file the complete appeal within 30 days after service of the decision, or, in accordance with 8 C.F.R. § 103.5a(b), within 33 days if the decision was served by mail. Title 8 C.F.R. § 103.2(a)(7)(i) requires Citizenship and Immigration Services (CIS) to reject any petition or application filed with the incorrect filing fee. Likewise, filings which were rejected because they were submitted with incorrect filing fees do not retain filing dates. The actual filing date for the Form I-290B is November 29, 2005, 38 days after the decision was served by mail. Thus, the appeal was not timely filed and must be rejected on these grounds pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The petitioner was put on notice of the correct fee by the information appearing of the director's October 22, 2005, decision. The new fee amount and its effective date appeared in the Federal Register during August 2005. *See* 70 Fed. Reg. 50954 (Aug. 29, 2005). CIS, has no authority to accept an untimely appeal which failed to hold a timely filing date due to the submission of an incorrect filing fee. CIS is compelled to reject such an appeal. Title 8 C.F.R. § 103.3(a)(2)(v)(B)(1) states in pertinent part that "[a]n appeal which is not timely filed within the time allowed must be rejected as improperly filed." Therefore, under the regulations, CIS lacks the authority to consider the untimely appeal.

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 as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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.

ORDER: The appeal is rejected.