

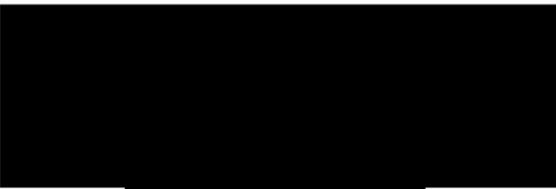


U.S. Citizenship
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SRC-05-175-52107

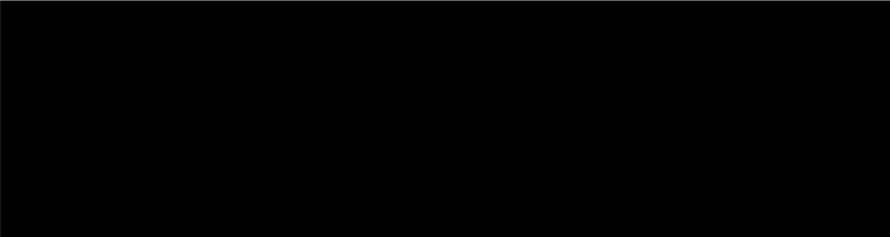
Office: TEXAS SERVICE CENTER Date: JUN 08 2007

IN RE: Petitioner:
Beneficiary:



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, Texas Service Center (“director”), denied the preference visa petition that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner is a Spanish radio station, and seeks to employ the beneficiary permanently in the United States as a Radio Announcer. As required by statute, the petition filed was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition, and denied the petition.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party, in order to properly file an appeal, 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 September 12, 2005. The director properly gave notice to the petitioner that it had 30 days to file the appeal. Citizenship and Immigration Services (CIS) initially received the appeal on October 18, 2005, 36 days after the decision was issued. CIS initially rejected the appeal on October 18, 2005, and returned the appeal form to counsel as counsel had enclosed the improper filing fee. Counsel resubmitted the appeal with the correct filing fee on November 4, 2005, 53 days after receiving the director’s decision.¹ The appeal received on October 18, 2005 was submitted late, and would have been untimely filed even if the petitioner had submitted the proper filing fee. The appeal subsequently resubmitted and filed on November 4, 2005, was untimely filed. *See* 8 C.F.R. § 103.2(a)(7) (receipt date is assigned when filing is properly completed).

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 While the AAO notes that the instructions in the director's September 12, 2005 decision identified the proper filing fee for the appeal as \$110.00, this decision was dated and mailed before the effective date of the filing fee change to \$385.00. The petitioner was put on notice of the fee change and its effective date, which appeared in the Federal Register in August 2005. *See* 70 Fed. Reg. 50954 (Aug. 29, 2005). CIS, which includes both the Texas Service Center and the AAO, has no authority to accept an untimely appeal, whether based on late filing, or due to the submission of an incorrect filing fee. 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.”