

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



U.S. Citizenship
and Immigration
Services

B6

PUBLIC COPY



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 22 2007
WAC 05 054 52069

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "RWiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the third preference immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

An attorney filed the appeal in this matter. That attorney, however, did not file a Form G-28, Notice of Entry of Appearance in this matter. As such, the attorney is not the petitioner's counsel of record. All representations will be considered, but the decision will be furnished only to the petitioner.¹

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 29, 2005. The director properly gave notice to the petitioner that it had 30 days to file the appeal, or 33 days if submitted by mail. The instructions on that decision, however, incorrectly stated that the fee for filing an appeal was \$110.

A Form I-290B, Notice of Appeal to Administrative Appeals Unit (AAU), was received by the California Service Center on October 27, 2005, 28 days after the decision was mailed. However, the Form I-290B included the incorrect filing fee of \$110.00. A new filing fee of \$385.00 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.

On October 28, 2005, the California Service Center returned the Form I-290B to the petitioner and indicated that it included the incorrect filing fee. The California Service Center received the resubmitted Form I-290B with the proper \$385.00 filing fee on December 6, 2005, 68 days after the decision of denial was issued. This office notes that the director incorrectly stated the appeal fee, but that the appeal fee was increased by regulation with notice to the public and the appeal was not, therefore, timely filed with the correct fee. The appeal, therefore, may not be considered timely 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 On the Form I-290 appeal counsel stated that he represents the beneficiary in this matter. Citizenship and Immigration Services' (CIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). This office would typically reject such an appeal as improperly filed. In the instant case, however, as the same attorney filed the Form I-140 petition in this matter, this office finds that the petitioner apparently acquiesced in filing the instant appeal, and will entertain it.