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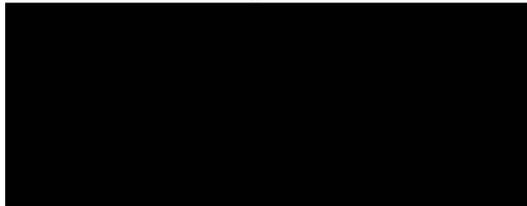


File: [REDACTED] Office: TEXAS SERVICE CENTER Date: AUG 04 2008
SRC 05 149 51060

IN RE: Petitioner: [REDACTED]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

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, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 31, 2005. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. The director did not, however, advise the petitioner that the appeal fee was going up to \$385 as of September 28, 2005. Nevertheless the fee increase was published in the Federal Register on August 29, 2005. 70 Fed. Reg. 50954 (August 29, 2005). The notice in the Federal Register provides: "Applications mailed, postmarked, or otherwise filed, on or after September 28, 2005 require the new fee." The appeal is postmarked September 30, 2005, two days after the fee increase went into effect. The appeal was received by Citizenship and Immigration Services (CIS) on October 3, 2005 accompanied by a fee of \$110 and was rejected for the improper fee. The appeal was received with the proper fee on October 12, 2005, or 42 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). 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.