

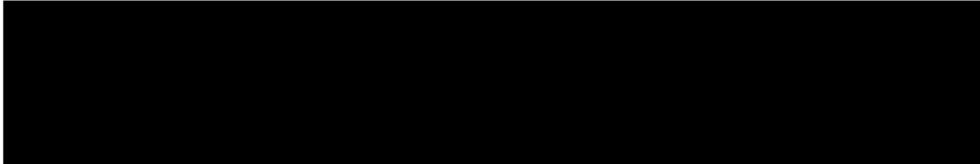
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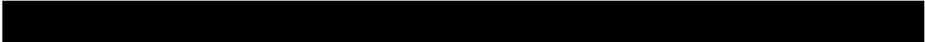
U.S. Citizenship
and Immigration
Services

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FILE: EAC 05 108 53165 Office: VERMONT SERVICE CENTER Date: **JUL 17 2007**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

Robert P. Wiemann
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) determined that the appeal was not filed in a timely manner. The AAO rejected the appeal without rendering a decision. The matter is now before the AAO on a motion to reconsider. The motion will be rejected.

The petitioner is a non-profit German language school that seeks to employ the beneficiary as a teacher. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on September 7, 2005. On November 7, 2005, the petitioner filed an appeal seeking review of the director's decision. After reviewing the record, the AAO rejected the appeal as the appeal had not been filed in a timely manner. Any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The petitioner has now filed a motion seeking to reconsider the appeal that was rejected as untimely filed.

As the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reconsidered in this proceeding. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Because the disputed decision was rendered by the director, the AAO has no jurisdiction over this motion and the motion must be rejected.

ORDER: The motion is rejected.