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U.S. Citizenship
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FILE: WAC 04 164 53922 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2005

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be rejected as not timely filed.

As provided in 8 C.F.R. § 103.3(a)(2)(i), an appeal together with the fee specified in 8 C.F.R. § 103.7 must be filed “with the office where the unfavorable decision was made” within 30 days of the date the decision was served. Three additional days are allowed for an appeal if the notice of decision was served by mail. *See* 8 C.F.R. § 103.5a(b). Since the notice of decision was mailed to the petitioner in this case, a 33-day appeal period applies. Furthermore, if the last day of the appeal period falls on a weekend or a holiday, the deadline is extended until the next working day. *See* 8 C.F.R. § 1.1(h).

The record indicates that the decision was mailed to the petitioner on August 12, 2004. Under the regulations, therefore, the service center was the proper office to receive an appeal and the filing deadline for an appeal was September 14, 2004 – 33 days after the decision was served by mail. The petitioner’s appeal (Form I-290B) bears a receipt stamp showing that it was received by the AAO on September 15, 2004 at 1:48 p.m. Thus, the appeal was mailed to the wrong office and arrived one day after the filing deadline. The AAO returned the appeal to the petitioner by mail with instructions for submitting it to the appropriate office. The appeal was subsequently mailed by the petitioner to the service center, where it was stamped received on September 29, 2004. That was 48 days after the decision was mailed, and 15 days after the deadline for filing an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) provides that “[a]n appeal which is not filed within the time allowed must be rejected as improperly 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. § 103.3(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

Since the appeal was not timely filed with the service center, it must be rejected.

ORDER: The appeal is rejected.