



U.S. Citizenship  
and Immigration  
Services

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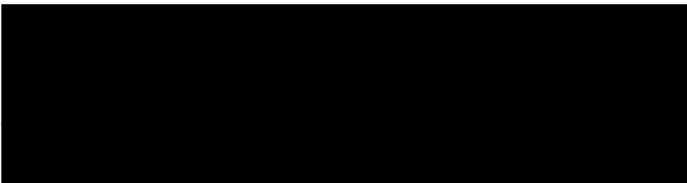


FILE: WAC 03 218 54696 Office: CALIFORNIA SERVICE CENTER Date: **AUG 12 2004**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

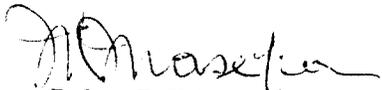
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The Director, California 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 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 the following facts. The director issued the decision on January 29, 2004, by a letter which was properly addressed to the petitioner and which gave the petitioner proper notice that it had 33 days to file the appeal. The matters that the petitioner submitted on appeal – a Form I-290B (Notice of Appearance), dated March 12, 2004; a document entitled “Separate Brief;” and material referenced in that document - were first received by Citizenship and Immigration Services (CIS) on March 15, 2004, or 46 days after the decision was issued. CIS could not accept this material for filing, because it was submitted without the required filing fee. Accordingly, CIS returned all the appeal documents to the petitioner with a rejection notice that identified the fee deficiency. CIS next received the appeal documents on March 23, 2004, or 54 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.