



U.S. Citizenship
and Immigration
Services

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FILE: EAC 03 057 55162 Office: VERMONT SERVICE CENTER Date:

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:

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 that the director issued the decision on March 26, 2003. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. On April 29, 2003, Citizenship and Immigration Services (CIS) first received the materials that the petitioner intended to file on appeal. However, because the Form I-290B (Notice of Appeal) had not been signed, CIS returned the materials to the petitioner with a notice that they could not be accepted without a proper signature on the Form I-290B. After signing the Form I-290B, the petitioner again forwarded the appeal materials to CIS. However, they were not received by CIS until May 6, 2003, or 41 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.