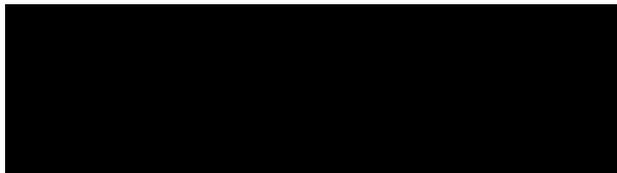




U.S. Citizenship
and Immigration
Services

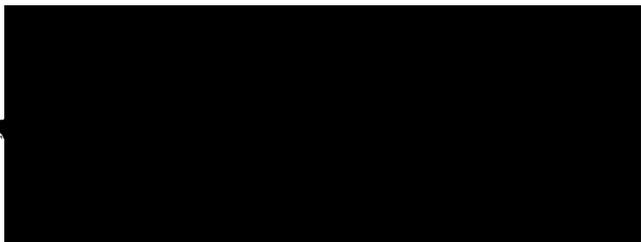


FILE: WAC 01 023 50088 Office: CALIFORNIA SERVICE CENTER Date:

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center (CSC), 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 dispositive facts. The director issued the decision on January 29, 2002, and CSC mailed it to the only address that the petitioner had communicated to CSC, namely, the petitioner's address at 4 [REDACTED], California. The petitioner had notified the United States Postal Service - but not CIS - that it was changing its address to [REDACTED] as of January 28, 2002. The envelope in which CSC mailed the director's decision to the Canal Street address was post marked February 1, 2002 and returned to CSC with a yellow sticker affixed to it that bore the phrase "Return to Sender" above and below the petitioner's new address. After receiving the returned envelope on February 14, 2002, CSC re-mailed it and its contents in a new envelope that was addressed to the petitioner's new address. This envelope was post marked March 28, 2002. Although counsel does not state when the petitioner received the decision at its new address, it can be inferred that it was before April 9, 2002, which appears to be the date that the petitioner faxed a copy of the decision to counsel.

On the Form I-290B, which was filed on April 26, 2002, counsel requests an additional thirty days to file matters relevant to the appeal:

Notice of Decision was received by the employer [on the] 28th of March, 2002. Our office did not receive any notice. Please therefore we request an additional 30 days to file additional documents.

Service of the decision in this proceeding was effected on January 29, 2002, the date on which the decision was first mailed to the petitioner, for the regulation at 8 C.F.R. § 103.5a(a)(1) states, "Routine service consists of mailing a copy by ordinary mail addressed to a person at his last known address." Consequently, the petitioner was required to file its appeal no later than March 4, 2002. It failed to do so, and Citizenship and Immigration Services (CIS) regulations do not excuse the late filing of an appeal that is caused by a petitioner's failure to timely notify CIS of a change of address.

The fact that counsel's office "did not receive any notice" has no bearing. As counsel's only Form G-28 (Notice of Entry of Appearance as Attorney or Representative) in the record of this proceeding was executed on April 16, 2002, after the decision was issued, counsel was not entitled to notice.

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.

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As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.