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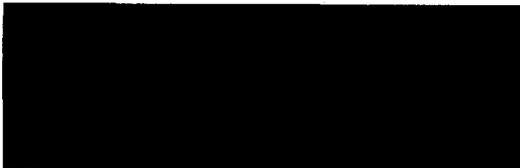
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. A3042  
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U.S. Citizenship  
and Immigration  
Services

D2



FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: APR 05 2005

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

C: [Redacted]

**DISCUSSION:** The Director, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an 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 June 20, 2002, and included notice of the 33 days that CIS regulations allow for filing the appeal. The record reflects that the appeal was initially rejected for failure to include the required filing fee, and that CIS did not receive the appeal with the required fee until August 1, 2002, or 42 days after the decision was issued.

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. Accordingly, the appeal must be rejected as untimely filed.

Additionally, the appeal was filed by an attorney representing the beneficiary alone. Only the beneficiary signed the client authorization section of the Form G-28 (Entry of Appearance as Attorney or Representative) that was submitted in conjunction with the appeal, and the attorney identified in the G-28 signed the Form I-290B (Notice of Appeal) only as counsel for the beneficiary. Citizenship and Immigration Services (CIS) regulations specifically state that a beneficiary of a visa petition is not recognized as an affected party in a proceeding. 8 C.F.R. § 103.2(a)(3). As the beneficiary is not an affected party, her attorney is not authorized to file an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). Accordingly, the AAO will reject the appeal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The appeal must be rejected on each of the grounds discussed above, namely: submission by a person who is not authorized to file an appeal, and lateness.

**ORDER:** The appeal is rejected.