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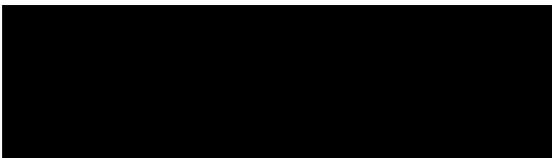


FILE: WAC 03 246 50834 Office: CALIFORNIA SERVICE CENTER Date: JUN 21 2005

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

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 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

DISCUSSION: The service center director denied the application for extension of stay and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected..

The director denied the application for extension of stay under 8 C.F.R. § 214.1(c)(4) as the applicant failed to maintain status, or where the previously accorded status expired before the petition was filed. 8 C.F.R. § 214.1(c)(5) provides that there is no appeal from the denial of an application for an extension of stay. Thus, the appeal must be rejected.

Further, 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 of 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 Feb. 26, 2004. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Although the petitioner dated the appeal March 29, 2004, it was received by Citizenship and Immigration Services (CIS) on April 7, 2004, 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.

The appeal must also be rejected because it was was untimely filed.

ORDER: The appeal is rejected.