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**U.S. Citizenship
and Immigration
Services**

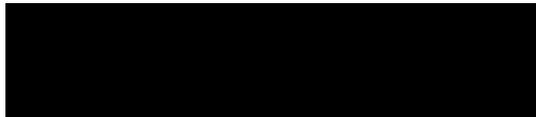
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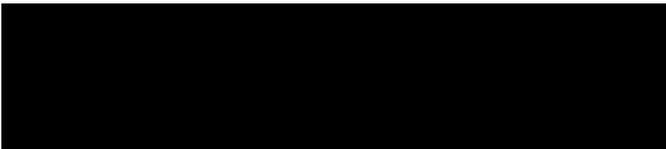
FILE: WAC 04 184 51243 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2005

IN RE: Petitioner:
Beneficiary:



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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be rejected as not timely filed.

As provided in 8 C.F.R. § 103.3(a)(2)(i), an appeal together with the fee specified in 8 C.F.R. § 103.7 must be filed “with the office where the unfavorable decision was made” within 30 days of the date the decision was served. Three additional days are allowed for an appeal if the notice of decision was served by mail. *See* 8 C.F.R. § 103.5a(b). Since the notice of decision was mailed to the petitioner in this case, a 33-day appeal period applies. If the last day of the appeal period falls on a weekend or a holiday, the deadline is extended until the next working day. *See* 8 C.F.R. § 1.1(h).

The service center’s decision was issued on December 29, 2004. Under the regulations, therefore, the filing deadline for an appeal was Monday, January 31, 2005 – 33 days after the decision was served by mail. The record indicates that counsel submitted an appeal (Form I-290B) that was initially received by the service center on January 27, 2005. The service center sent a rejection notice (Form I-797C) to counsel on January 28, 2005, however, advising him that the appeal could not be accepted because the proper fee of \$110.00 was not included. Counsel resubmitted the appeal with the proper fee, which was stamped as received by the service center on February 3, 2005.

An appeal – like petitions, motions, and other requests submitted to CIS – is regarded as properly filed when stamped by the receiving office, “if it is signed and executed and the required filing fee is attached.” 8 C.F.R. § 103.2(a)(7). Improperly filed appeals “shall be rejected . . . [and] . . . will not retain a filing date.” *Id.* Since the required filing fee was not submitted by counsel until February 3, 2005, the petitioner’s appeal was not properly filed until that date, which was three days after the deadline of January 31, 2005. The regulation at 8 C.F.R. § 103.3 (a)(2)(v)(B)(1) provides that “[a]n appeal which is not filed within the time allowed must be rejected as improperly 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. § 103.3 (a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

Since the appeal was not timely filed, it must be rejected.

ORDER: The appeal is rejected.