U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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APR 17 2007

FILE: WAC 05 150 51013 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

for Michael T. Kelly
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant 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 November 22, 2005. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal and instructed the petitioner to file the appeal with the California Service Center. The petitioner, however, forwarded the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), to the AAO in error. An appeal is not properly filed until the proper office, in this case the California Service Center, receives it.

With the appeal, the petitioner submits a letter in which he states that he mistakenly forwarded the appeal to the AAO. He states further that the AAO returned the Form I-290B as improperly filed. The petitioner resubmitted the appeal to the California Service Center in accordance with the instructions. The appeal was received by the California Service Center on January 10, 2006, 49 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.