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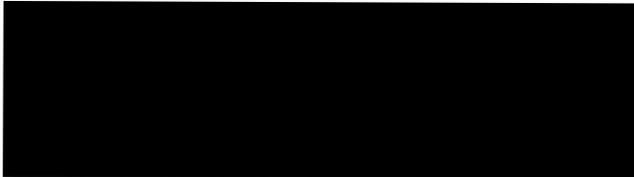
U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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FILE: WAC 07 006 51500 Office: CALIFORNIA SERVICE CENTER Date: **APR 30 2008**

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:

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.

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

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal, but was untimely filed as such. By operation of the regulation on untimely appeals at 8 C.F.R. § 103.3(a)(2)(v)(B)(2), the AAO will (1) reject the matter as an appeal, but also (2) remand the matter to the director for consideration as a motion to reconsider and the entry of a new decision based upon such consideration, because, though untimely filed for consideration on appeal, the matter does meet the requirements for a motion.

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 March 29, 2007. 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 April 28, 2007, it was received by Citizenship and Immigration Services (CIS) on May 4, 2007, or 36 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 AAO finds that the matters here submitted too late for consideration on appeal do sufficiently contest the grounds of the director's decision to qualify for treatment as a motion for reconsideration. Therefore, in accordance with 8 C.F.R. § 103.3(a)(2)(v)(B)(2), the matter will be remanded to the Director of the California Service Center for a new decision on the merits. The director must consider the untimely appeal as a motion for reconsideration, adjudicate the matter accordingly, and render a new decision in accordance with the regulatory requirements regarding motions.

**ORDER:** The appeal is rejected as untimely and the matter is returned to the director for treatment as a motion and the issuance of a new decision.