



U.S. Citizenship
and Immigration
Services

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FILE: WAC 06 110 50896 Office: CALIFORNIA SERVICE CENTER Date: MAY 15 2007

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 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 August 10, 2006. It is noted that the Director properly gave notice to the petitioner that she had 33 days to file the appeal. The appeal was received by the California Service Center on September 14, 2006, or 35 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 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 Administrative Appeals Office (AAO). As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.