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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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File: WAC 03 267 50367 Office: CALIFORNIA SERVICE CENTER Date: **APR 04 2005**

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

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN 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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The petitioner filed a subsequent appeal. The Director, California Service Center determined that the appeal was not filed in a timely manner and rejected the appeal without rendering a decision. The matter is now before the AAO on a motion to reopen or reconsider. The motion will be rejected.

The petitioner seeks to classify the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

The director denied the petition on December 14, 2003. On January 14, 2004, counsel for the petitioner submitted an appeal seeking review of the director's decision. However, the Form I-290B was not properly executed and was thus returned to the petitioner. The petitioner subsequently submitted a properly executed Form I-290B on January 21, 2004, 38 days after the director's decision was issued. After reviewing the record, the director determined the appeal had not been filed in a timely manner. Any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1). The director also noted that the appeal did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3).

The petitioner has now filed a motion seeking to reopen the appeal that was rejected as untimely filed.

As the original appeal was rejected by the service center as untimely filed, there is no decision that may be appealed in this proceeding. A rejected appeal is not an appealable decision. *See* 8 C.F.R. § 103.3(a)(1). According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Because the disputed decision was rendered by the director, the AAO has no jurisdiction over this motion and the motion must be rejected.

ORDER: The motion is rejected.