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**U.S. Citizenship
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Services**

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File: WAC 04 146 52871 Office: CALIFORNIA SERVICE CENTER Date: DEC 22 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:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal.¹ 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). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in an office of the Citizenship and Immigration Services (CIS) shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on December 9, 2004. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. According to the date stamp on the Form I-290B Notice of Appeal, it was received by CIS on Wednesday, January 12, 2005, or 34 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.

¹ The AAO notes that the record in this proceeding contains a letter from counsel expressing confusion regarding a CIS decision dated February 22, 2005 relating to an I-129 L-1A petition (LIN 03 120 52499) filed by the same petitioner for the same beneficiary. CIS records show that the petition in question was initially approved on April 29, 2003 and later revoked on February 22, 2005. Any decision or notice relating to that petition was sent to counsel of record for that petition, the Law Offices of Kameli & Associates. The AAO is unable to provide counsel with copies of any notice or decision relating to the LIN 03 120 52499 petition as the record for that proceeding is not presently before the AAO. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). The AAO has forwarded counsel's query to the Nebraska Service Center for action. However, it is recommended that counsel once again contact the Nebraska Service Center directly with any request relating to the record in that proceeding.