

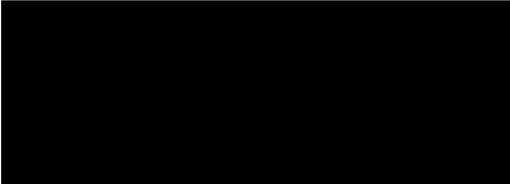


U.S. Citizenship
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FILE: WAC 02 239 51567 Office: CALIFORNIA SERVICE CENTER Date: FEB 28 2005

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(1)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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.


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 Administrative Appeals Office (AAO) determined that the appeal was not filed in a timely manner. The AAO rejected the appeal without rendering a decision. The matter is now before the AAO on motion. The motion will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A 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 June 18, 2002. On July 24, 2002, counsel for the petitioner filed an appeal seeking review of the director's decision. 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 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). In the present matter, the appeal was received by the director 36 days after the decision was issued. The director declined to treat the instant appeal as a motion and forwarded the matter to the AAO.

After reviewing the record, the AAO rejected the appeal as it had not been filed in a timely manner. The AAO has noted counsel's statement that "there is no evidence" as to when the denial dated June 18, 2004 was mailed by CIS. Contrary to this assertion, the CIS electronic record indicates that the decision was mailed on June 18, 2004. However, if counsel had submitted evidence corroborating that the decision was mailed late, such as a supporting postmark on the mailing envelope, the AAO would not have rejected the appeal. Similarly, the AAO could reopen the rejection of the appeal on its own motion with such evidence at this time. Absent countervailing evidence of record, the AAO must accept the date of the decision, June 18, 2004, as the mailing date. Consequently, the appeal in this matter was untimely filed. 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 petitioner has now filed a motion seeking to reopen the appeal that was rejected as untimely filed. As the initial appeal was properly rejected by the AAO, there is no decision on the part of the AAO that may be reopened in this proceeding. The AAO rejected the appeal and did not enter a decision on this matter.

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. Because the Director, California Service Center rendered the decision, the AAO has no jurisdiction to treat the late appeal as a motion and the motion must be rejected. It is noted that counsel originally submitted the appeal form without supporting evidence or a brief; instead counsel indicated that he would submit a brief to the AAO within 30 days. Accordingly, the director could not have treated the late appeal as a motion since the appeal did not meet the requirements of a motion. *See* 8 C.F.R. § 103.5.

ORDER: The motion is dismissed.