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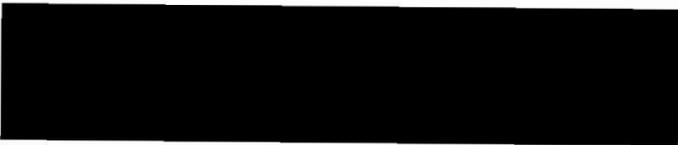


File: LIN 05 049 50939 Office: NEBRASKA SERVICE CENTER Date: SEP 08 2006

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. 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.<sup>1</sup> 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 decision was first served upon the petitioner by facsimile on March 9, 2005. It is noted that the director properly gave notice to the petitioner that an appeal must be filed within 30 days from the date of service as required by the regulation at 8 C.F.R. § 103.3(a)(2)(i). The date stamp on the Form I-290B Notice of Appeal shows that the appeal was received by CIS on April 11, 2005, or 33 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.

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<sup>1</sup> If the decision was mailed, the appeal must be filed within 33 days. See 8 C.F.R. § 103.5a(b).