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**U.S. Citizenship  
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Services**

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D-7

File: LIN 04 137 53343 Office: NEBRASKA SERVICE CENTER Date: **AUG 03 2007**

IN RE: Petitioner:  
Beneficiary:



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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director of the Nebraska Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(I).<sup>1</sup>

The regulation at 8 C.F.R. § 103.3(a)(2)(i) requires an affected party to file the complete appeal within 30 days after service of the decision, or, in accordance with 8 C.F.R. § 103.5a(b), within 33 days if the decision was served by mail. The record indicates that the decision of the director was mailed and faxed on Thursday, July 22, 2004. Despite the fact that the instructions attached to the decision clearly direct the petitioner to file an appeal directly with the Nebraska Service Center within 30 days, the record indicates that the petitioner attempted to file an appeal on Tuesday, August 24, 2004 directly with the AAO, which properly refused to accept the appeal. Thereafter, the petitioner filed the appeal with the Nebraska Service Center on Friday, September 3, 2004, 43 days after the decision was mailed and faxed. Thus, the appeal was not timely filed.

The regulation at 8 C.F.R. § 103.2(a)(1) requires that all documents submitted to a service center be filed in accordance with the instructions on the form. Further, both 8 C.F.R. § 103.2(a)(6) and 8 C.F.R. § 103.3(a)(2)(i) require that the instant appeal be filed within 30 days with the Nebraska Service Center, not directly with the AAO. The service center only forwards appeals, such as the present matter, to the AAO if it will not be taking favorable action or if it decides that favorable action is not warranted. 8 C.F.R. § 103.3(a)(2)(iii). The petitioner's attempt to file this appeal directly with the AAO did not establish a receipt date of August 24, 2004, as this attempted filing violated both the instructions in the decision and the regulations. Rejected applications and petitions do not retain a filing date. 8 C.F.R. § 103.2(a)(7)(i). Therefore, the receipt date for the instant motion was the day it was received by the Nebraska Service Center, September 3, 2004, or 43 days after the decision was mailed and faxed.

Furthermore, it must be noted that even the petitioner's defective filing with the AAO was untimely. As indicated above, the AAO appears to have received the Form I-290B on or about Tuesday, August 24, 2004, or 33 days after the appeal was faxed to the petitioner's counsel. The service center used the fax number provided by counsel in the Form I-907, Request for Premium Processing Service, which was identified as counsel's preferred form of communication. The regulation at 8 C.F.R. § 103.3(a)(2)(i) requires an affected party to file the complete appeal within 30 days after service of the decision. Therefore, the appeal would have been untimely, and would be rejected, even if the AAO's receipt of the Form I-290B established a receipt date of August 24, 2004, which it did not.

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 as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R.

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<sup>1</sup>It should be noted that, according to Illinois state corporate records, the petitioner's corporate status in Illinois was "involuntarily dissolved" on February 1, 2005. Therefore, as the State of Illinois has terminated the petitioner's corporate existence, which prohibits it from carrying on any business except for taking action to wind up its affairs, the company no longer exists and can no longer be considered a legal entity in the United States. *See* 805 Ill. Comp. Stat. Section 12.40 (2006). Therefore, this would call into question the petitioner's continued eligibility for the benefit sought if the appeal were not being rejected for reasons stated herein.

§ 103.5(a)(3), 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.

**ORDER:**                   The appeal is rejected.