

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

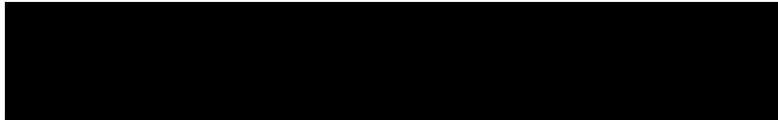
PUBLIC COPY



D7

File: SRC 05 224 50396 Office: TEXAS SERVICE CENTER Date: FEB 02 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:

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director of the Texas 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 as untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2) 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 to the petitioner on November 16, 2005. The petitioner attempted to file an appeal by sending the Form I-290B and the \$385.00 filing fee directly to the AAO. The AAO received the Form I-290B and the filing fee on December 16, 2005, 30 days after the decision was mailed. However, the regulations and the instructions to the Form I-290B clearly require that appeals be filed "with the office where the unfavorable decision was made." 8 C.F.R. § 103.3(a)(2)(i). Petitions which are rejected for filing because they were sent to the wrong office do not retain filing dates. *See* 8 C.F.R. § 103.2(a)(7). As required by the regulations, the record indicates that the AAO mailed these materials back to the petitioner on the same day it received them with a letter indicating that the appeal must be submitted to the service center which rendered the decision, i.e., the Texas Service Center. The petitioner filed an appeal with the Texas Service Center on December 23, 2005, 37 days after the decision was mailed. As the attempted filing with the AAO did not retain a filing date, the appeal was not timely filed and must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

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. § 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.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.