

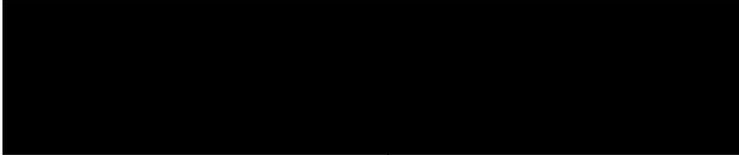
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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3000
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U.S. Citizenship
and Immigration
Services

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File: SRC 05 100 50909 Office: TEXAS SERVICE CENTER Date:

MAR 06 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, Texas 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 “with the office where the unfavorable decision was made.” 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 a CIS office 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. However, rejected applications and petitions will not retain a filing date. *Id.*

The record indicates that the director issued the decision on November 9, 2005. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Additionally, the decision included the following instructions: “If an appeal is desired, the Notice of Appeal shall be executed and filed with this office, together with the required fee.” (Emphasis in original).

According to the initial date stamp on the Form I-290B Notice of Appeal, it was received by the AAO on December 12, 2005 with the fee of \$385. On that same day, the AAO returned the appeal to the petitioner and advised that the Notice of Appeal and fee must be filed with the service center which rendered the decision. The materials were then submitted to the Texas Service Center on December 21, 2005, or 42 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.