

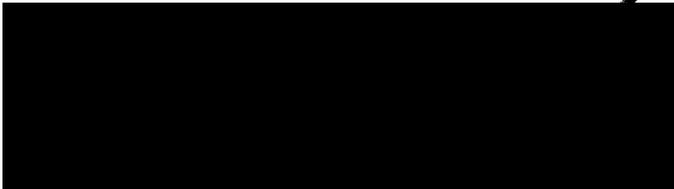
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FILE: WAC 03 181 50174 Office: CALIFORNIA SERVICE CENTER Date:

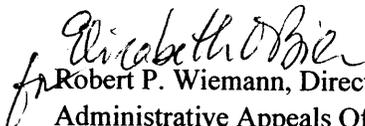
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

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.

for 
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California 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.

A Form I-129, Petition for a Nonimmigrant Worker, was filed on May 29, 2003, in the name of OC All-Stars Cheer and Dance, seeking O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in cheerleading, in order to employ him as a cheerleading coach for a period of three years at an annual salary of \$30,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is one of the small percentage who has arisen to the very top of his field of endeavor. The director denied the petition, in part, finding that the petitioner failed to submit a consultation. Finally, the director denied the petition, in part, finding that the beneficiary was not coming to the United States to continue in the area of his extraordinary ability.

Counsel for the petitioner filed an appeal and submitted additional evidence in support of the appeal.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) states the following regarding time restrictions for appeals filed with the AAO:

The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

If the director's decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

In the instant case, the director issued the decision dismissing the petition on August 12, 2003. The appeal was filed on September 19, 2003, 38 days after the denial notice was issued. The appeal was filed and received after the expiration of the 33-day period allowed for filing an appeal. Consequently, the AAO must reject the petitioner's appeal as untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) state that CIS must treat certain untimely appeals as motions pursuant to the following guidelines:

If an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) of this part or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part, that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or

petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In review, the petitioner failed to submit sufficient evidence to meet the requirements for a motion to reopen or a motion to reconsider.

ORDER: The appeal is rejected.