

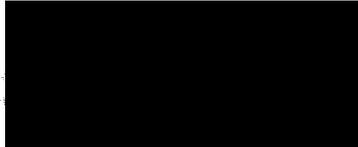
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U.S. Department of Homeland Security
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U.S. Citizenship
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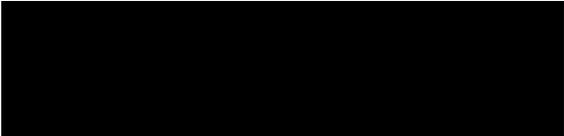


In

FILE:  Office: NEBRASKA SERVICE CENTER Date: **MAR 08 2005**
(LIN-03-220-55079 relates)

IN RE: Applicant: 

APPLICATION: Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203.

ON BEHALF OF APPLICANT:


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, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Nebraska Service Center, the application for travel document. 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 after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. See 8 C.F.R. § 103.5a(b).

The record indicates that the Acting Director issued the decision on August 12, 2004. It is noted that the Acting Director properly gave notice to the applicant that he had 33 days to file the appeal. The Notice of Appeal to the AAO (Form I-290B) was forwarded to the AAO in error. An appeal is not properly file until the proper office, in this case the Nebraska Service Center, receives it. The appeal was received by the Nebraska Service Center on September 22, 2004, 41 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulations 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 proceedings, in this case the Acting Director, Nebraska Service Center. See 8 C.F.R. § 103.5(a)(1)(ii). The Acting 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.