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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



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FILE:



Office: NEBRASKA SERVICE CENTER

(LIN-02-248-51004 relates)

Date: **MAY 24 2005**

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:

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and 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 Director issued the decision on April 28, 2004. It is noted that the Director properly gave notice to the applicant that she had 33 days to file the appeal. The Notice of Appeal to the AAO (Form I-290B) was forwarded to Vermont Service Center in error. An appeal is not properly filed until the proper office, in this case the Nebraska Service Center, receives it.

On appeal the applicant's spouse submits a letter in which he states that his family's applications were forwarded to the Vermont Service Center within the required time after he consulted the U.S. Embassy in Abu Dhabi. He further states that the Vermont Service Center returned the Form I-290B as they did not have jurisdiction over the appeal. He resubmitted everything to the Nebraska Service Center and asked that the documentation be accepted.

The applicant's spouse's statement is not persuasive. In his decision the Director states: ". . . You must submit such an appeal to THIS OFFICE with a filing fee . . ." Therefore the applicant should have been aware of the requirement of submitting the Form I-290B to the Nebraska Service Center. The appeal was received by the Nebraska Service Center on June 18, 2004, 51 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.