U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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JAN 11 2005

[redacted]

FILE: WAC 02 175 51934 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely.

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 after service of the unfavorable decision. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states that "'affected party' (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition." If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). 8 C.F.R. § 1.1(h) explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

The record indicates that the director issued the decision on November 5, 2003. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. On December 8, 2003, the beneficiary submitted the Form I-290B, Notice of Appeal. However, the appeal was not accepted because it was signed by the beneficiary rather the petitioner and therefore improperly filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(*1*) states that "[a]n appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded."

Rather than rejecting the beneficiary's appeal as improperly filed, on December 10, 2003, the Service Center issued a notice to the petitioner requesting that the Form I-290B be signed by the petitioner and resubmitted. On December 17, 2003, the petitioner submitted a properly signed Form I-290B.

The petitioner's appeal in this case was not properly filed until December 17, 2003, or 42 days after the decision was issued. It must therefore be rejected as 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, it must be rejected.

ORDER: The appeal is rejected.