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

[redacted]

D7

FILE: WAC 02 033 54257 Office: CALIFORNIA SERVICE CENTER Date: JUN 02 2004

IN RE: Petitioner: [redacted]
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)

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 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.

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. If the 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 denying the petition by mail on June 18, 2002. The record contains the envelope used to mail the appeal packet. The envelope contains the postmark, which indicates that the appeal packet was mailed on July 20, 2002, or 32 days after the decision was issued. Pursuant to 8 C.F.R. § 103.2(a)(7), an application or petition shall be considered properly filed when it is stamped to show the time and date of actual receipt. In the present matter, the appeal was received by CIS on July 24, 2002, or 36 days after the decision was issued. Therefore, the appeal was received after the expiration of the 30-day period allowed for filing appeal. 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.