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

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 01 059 50312 Office: CALIFORNIA SERVICE CENTER Date: JUN 17 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 nonimmigrant visa petition was denied by the Director, California Service Center. The petitioner filed a subsequent appeal. The director determined that the appeal was not timely filed, and thereafter treated it as a motion to reopen or reconsider. The director denied the motion, rejecting the appeal as untimely and improperly filed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner seeks to classify the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

The director denied the petition on August 9, 2001. On December 3, 2001, counsel filed a motion to reconsider seeking review of the director's decision. On August 5, 2002, the director denied the motion and indicated that the prior decision would be upheld. On January 14, 2003, counsel submitted a Notice of Appeal. The director noted that the appeal had been filed untimely and thereafter treated it as a motion to reopen/reconsider. After review of the record, the director declined to treat the appeal as a motion and rejected the appeal, determining that the appeal had been untimely filed and that the petitioner had failed to submit additional supporting evidence.

Counsel has now filed an appeal with AAO of the director's decision to reject the appeal as untimely and improperly filed. First, the director's rejection of the late appeal is not subject to appeal and this appeal must be rejected. *See* 8 C.F.R. § 103.3(a). Second, even if the AAO were to consider this appeal, the petitioner has once again filed the appeal in an untimely manner. The present appeal was filed on May 13, 2003, or 67 days after the director rejected the first appeal. To be considered properly filed, an appeal must be submitted within 33 days of the director's adverse decision

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 improperly and untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.