U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 03 2005
EAC 02 192 50505

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party, in order to properly file an appeal, 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).

Accordingly, the appeal was untimely filed. The record indicates that the director issued the decision on September 4, 2003. The director properly gave notice to the petitioner that it had 33 days to file the appeal. Citizenship and Immigration Services (CIS) received the appeal on October 15, 2003, 42 days after the decision was issued. The appeal, therefore, was untimely filed. Counsel offered no explanation for the untimely filing.

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.

Counsel, on section 2 of Form I-290B indicated that he would submit a brief and/or evidence to the AAU [now AAO] within 30 days. No brief and/or evidence were submitted within that time period although counsel did submit bank statements received by the Service Center on March 4, 2005. The regulations do not allow a petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed.

Notwithstanding the above, the record of proceedings shows that counsel has not responded to issues raised by the director. Namely, petitioner has not accompanied the petition with an acceptable certified Alien Employment Application, nor has the petitioner submitted acceptable evidence of its ability to pay the proffered wage.[1] Petitioner has not submitted an acceptable certified Alien Employment Application. Without the certified Alien Employment application, no appeal is allowed.

For the reasons stated above, and, as the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.

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[1] 8 C.F.R. § 204.5(g)(2) states in pertinent part: *Ability of prospective employer to pay wage*. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.