

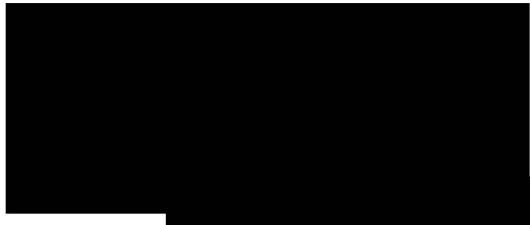
**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

B6



FILE:

SRC-04-058-51582

Office: TEXAS SERVICE CENTER

Date: NOV 09 2006

IN RE:

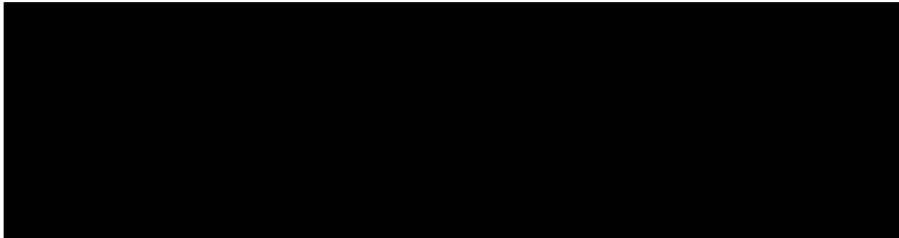
Petitioner:

Beneficiary:



**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:**



**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.

A handwritten signature in black ink, appearing to read "Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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.

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 with the office where the unfavorable decision was made. 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 1, 2005. The director properly gave notice to the petitioner that it had 33 days to file the appeal, and that the appeal should be filed with the Texas Service Center. The petitioner filed the appeal improperly and sent the appeal directly to the AAO. The AAO returned the filing to the petitioner with instructions to file the appeal with the Texas Service Center. The petitioner then submitted the appeal to the Texas Service Center, and Citizenship and Immigration Services (CIS) initially received the appeal on May 9, 2005, or 38 days after the decision was issued. The Service Center then returned the appeal to the petitioner for the petitioner to submit the appeal on the revised I-290 Form. The petitioner resubmitted the appeal, which was received and receipted on May 20, 2005. As the appeal was initially submitted to the wrong office, and subsequently first received at the proper filing location on May 9, 2005, the appeal was untimely filed. *See* 8 C.F.R. § 103.2(a)(7) (receipt date is assigned when filing is properly completed).

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 dismissed.