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D6

FILE: [Redacted]  
SRC 04 214 50663

Office: TEXAS SERVICE CENTER

Date: **NOV 18 2005**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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, Texas Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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. 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 November 29, 2004. It is noted that the director properly gave notice to the petitioner that he had 33 days to file the appeal. The appeal was received by Citizenship and Immigration Services on January 26, 2005, or 58 days after the decision was issued. Accordingly, the appeal was untimely filed.

The AAO notes that, although briefs and additional evidence can be filed at a later point in the time, the Form I-290B appeal must be filed within the 33 days allotted.

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 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.

The AAO notes that the petitioner is entitled to representation, however the individual filing the Form G-28 Notice of Entry of Appearance as Attorney or Representative does not appear to be authorized to do so pursuant to 8 C.F.R. § 292.1.

**ORDER:** The appeal is rejected.