



U.S. Citizenship
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Services

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File: SRC 05 183 50532 Office: TEXAS SERVICE CENTER Date: DEC 13 2006

IN RE: Petitioner:
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)

IN 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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director, Texas Service Center, denied the petition for a nonimmigrant visa. 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 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 accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a U.S. Citizenship and Immigration Services (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision via facsimile on October 3, 2005 in accordance with counsel and the petitioner's preferred form of communication indicated on the Form I-907, Request for Premium Processing Service. It is noted that, as the denial was served via fax and not by mail, the director properly gave notice to the petitioner that it had 30 days to file the appeal. According to the date stamp on the Form I-290B Notice of Appeal, it was received by CIS on Monday, November 7, 2005, or 35 days after the decision was issued.¹ Accordingly, the appeal was untimely filed.²

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, it must be rejected.

ORDER: The appeal is rejected.

¹ Although the Form I-290B Notice of Appeal was initially filed with the service center on Friday, October 28, 2005, it was properly rejected due to the failure by counsel to sign the form. 8 C.F.R. § 103.2(a)(7)(i). As rejected applications and petitions have not been properly received, they do not retain filing dates. *Id.* Thus, as the appeal in this matter was properly rejected and as there appears to have been no apparent delay by the service center in rejecting the appeal, it will not be considered timely filed until it was resubmitted by counsel in November 2005.

² It is noted for the record that the tracking results for the Form I-290B Notice of Appeal indicate that it was received by the service center on Friday, November 4, 2005, or 32 days after the decision was issued. Therefore, the appeal was untimely filed irregardless of this error in the actual receipt date.