



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

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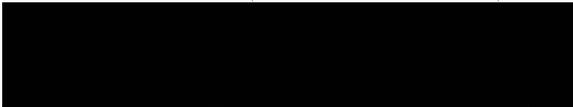
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FILE: WAC 03 268 54156 Office: CALIFORNIA SERVICE CENTER Date: **MAR 09 2006**

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 V.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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a hospital. It seeks to employ the beneficiary permanently in the United States as a registered nurse. As required by statute, two copies of the Form ETA 750, Application for Alien Employment Certification, not certified by the Department of Labor, accompanies the petition. The director determined that the petitioner had not established that the proffered position qualifies for Schedule A certification. The director denied the petition accordingly.

The director denied the petition in a notice of decision (NOD) dated October 12, 2004.

Under 8 C.F.R. § 103.3(a)(2)(i), the time for appeal is 30 days from the service of the NOD. An additional three (3) days are allowed for the service by mail herein. 8 C.F.R. § 103.5a(b).

Despite having issued the NOP on October 12, 2004, the director received the appeal more than 33 days afterwards, on November 22, 2004.<sup>1</sup>

Provisions of 8 C.F.R. § 103.3(a)(2)(v) state, with reference to Citizenship and Immigration Services (CIS), formerly the Service or the INS:

*Untimely appeal-- (1) Rejection without refund of filing fee.* An appeal which is not filed in the time allowed must be rejected as improperly filed. In such a case, any filing fee [CIS] has accepted will not be refunded.

The petitioner did not file the appeal within the time allowed, and it must be rejected as an improperly filed appeal.

**ORDER:** The appeal is rejected.

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<sup>1</sup> Counsel had to resubmit the Form I-290B after submitting it to the director unsigned on November 12, 2004.