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U.S. Citizenship  
and Immigration  
Services

B6



FILE: Office: TEXAS SERVICE CENTER Date: JUL 19 2007  
SRC 06 119 51353

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center, and 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 with the office where the unfavorable decision was made 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 March 24, 2006. The director properly gave notice to the petitioner that it had 33 days to file the appeal as it was sent by mail. Citizenship and Immigration Services (CIS) received the appeal on May 1, 2006, 38 days after the decision was issued. The appeal, therefore, was untimely filed.

In a letter dated April 27, 2006 counsel noted that he was providing an express mail envelope that was addressed to the Texas Service Center at [REDACTED] which counsel stated is the address to which the petition was originally sent. Counsel stated, correctly, that the envelope shows that delivery was attempted on April 26, 2006, but that the appeal was returned marked "not deliverable."

Counsel cited a March 24, 2006 news release issued by the CIS news office for the proposition that the misdirected appeal should have been forwarded to the correct address, honoring the original receipt date. That news release, however, only specifies the service centers with which Form I-129 and Form I-140 visa petitions should be filed. It contains no instructions for directing appeals, and no indication that misdirected appeals will be deemed filed when delivery is attempted at an incorrect address.

In the instant case, the decision of denial clearly stated that if the petitioner desired to appeal it should submit its appeal to the Texas Service Center, which issued the denial. The return address shown on the decision of denial is [REDACTED]. Counsel's misdirection of the appeal did not confer a filing date. As was stated above, the appeal was tardily received at the appropriate office on May 1, 2006.

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 rejected.