

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

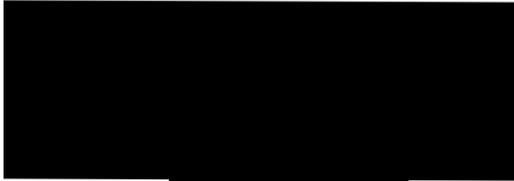
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B6

PUBLIC COPY



File:

SRC-05-166-51526

Office: TEXAS SERVICE CENTER

Date: MAR 29 2007

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.

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 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 September 13, 2005. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Counsel dated the Form 290B October 17, 2005 (34 days after the decision was issued) and it was received by Citizenship and Immigration Services (CIS) on Friday, October 20, 2005, or 37 days after the decision was issued. However, the director returned the appeal the same day because the appeal was improperly filed because counsel used an expired version of the Form 290B. Counsel re-filed the appeal with the proper version of the form on October 27, 2005, or 44 days after the decision was issued. On appeal counsel asserts that the petitioner timely submitted its I-290B appeal and requests the director to excuse the delay in filing the petition for extension and accept the I-290B as having been timely filed. However, regardless of the form version used, the initial appeal was submitted untimely, 37 days after the decision was issued. The regulation does not provide any extension to file an appeal. Counsel's immigration software system's failures cannot be considered extraordinary circumstances. Accordingly, the appeal was untimely filed.

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.