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U.S. Citizenship
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MAY 04 2007

FILE:

[Redacted]
WAC 05 203 51275

Office: CALIFORNIA SERVICE CENTER

Date:

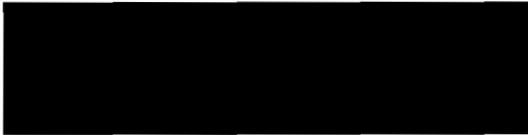
IN RE:

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 employment-based immigrant visa petition was denied by the Director, California Service Center. The matter 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 service of the adverse decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The director denied the I-140, Immigrant Petition for Alien Worker on November 10, 2005. The appeal was received by Citizenship and Immigration Services on Friday, December 23, 2005, or 43 days after the decision was issued and sent. Although the information contained on the director's denial of the I-485, Application to Register Permanent Residence or Adjust Status¹ erroneously stated the date of denial of the I-140, it remains the petitioner's burden to file a timely appeal. The denial of the I-140 properly indicated that the petitioner had 33 days from November 10, 2005 to file an appeal. An untimely appeal shall be rejected as improperly filed. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

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 petitioner's appeal is rejected.

¹ The director denied the I-485 on November 21, 2005. No right of appeal lies from this denial. *See* 8 C.F.R. § 245.2(a)(5)(ii).