



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: MAY 04 2007  
WAC 06 020 50943

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as an Other, Unskilled Worker or Pursuant to Section  
203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

IN BEHALF OF PETITIONER:

[REDACTED]

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. The case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The petitioner is a farm. It seeks to employ the beneficiary permanently in the United States as a farm laborer.

The record indicates that the director denied the I-140, Immigrant Petition for Alien worker on September 12, 2006. A Form I-290B, Notice of Appeal to Administrative Appeals Unit (AAU), was received by the Texas Service Center on October 13, 2006, 31 days after the decision was issued. However, the Form I-290B included an incorrect filing fee of \$380.00. The correct filing fee is \$385.00. On October 13, 2006, the Texas Service Center issued a rejection notice, returning the appeal and the fee to the petitioner, and advising the petitioner that it could not accept or assign any priority or processing date to the appeal because it had not been properly filed with the correct filing fee. It advised the petitioner to resubmit the package with the correct amount. The Service Center received the resubmitted Form I-290B with the proper \$385.00 filing fee on October 30, 2006.

The regulation at 8 C.F.R. § 103.3(a)(2) requires an affected party to file the complete appeal within 30 days after service of the decision, or, in accordance with 8 C.F.R. § 103.5a(b), within 33 days if the decision was served by mail. Title 8 C.F.R. § 103.2(a)(7)(i) requires Citizenship and Immigration Services (CIS) to reject any petition or application filed with the incorrect filing fee. Likewise, filings, which are rejected because they are submitted with incorrect filing fees, do not retain filing dates. Therefore, in this matter, CIS is required to reject the appeal as untimely filed. Although the petitioner initially submitted the I-290B within 33 days of service of the decision, this submission included the incorrect filing fee. Therefore, as this filing did not retain a filing date, the actual filing date for the Form I-290B is October 30, 2006, 48 days after the director's decision. CIS, which includes both the Texas Service Center and the AAO, has no authority to accept an untimely appeal that fails to hold a timely filing date due to the submission of an incorrect filing fee. CIS is compelled to reject such an appeal. Title 8 C.F.R. § 103.3(a)(2)(v)(B)(1) states in pertinent part that "[a]n appeal which is not timely filed within the time allowed must be rejected as improperly filed." Therefore, under the regulations, CIS lacks the authority to consider the untimely appeal.

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 as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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.

**ORDER:** The appeal is rejected as untimely filed.