

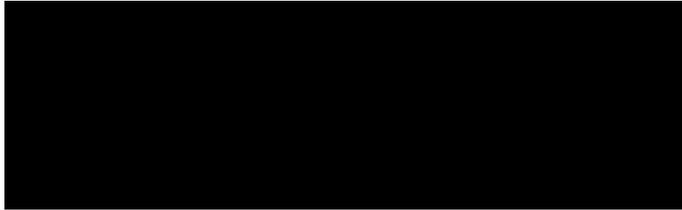


U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 177 50425 Office: CALIFORNIA SERVICE CENTER Date: NOV 01 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER: Self represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be rejected as not timely filed.

As provided in 8 C.F.R. § 103.3(a)(2)(i), an appeal together with the fee specified in 8 C.F.R. § 103.7 must be filed “with the office where the unfavorable decision was made” within 30 days of the date the decision was served. Three additional days are allowed for an appeal if the notice of decision was served by mail. *See* 8 C.F.R. § 103.5a(b). Since the notice of decision was mailed to the petitioner in this case, a 33-day appeal period applies. If the last day of the appeal period falls on a weekend or a holiday, the deadline is extended until the next working day. *See* 8 C.F.R. § 1.1(h).

The service center’s decision was issued on December 10, 2004. Under the regulations, therefore, the filing deadline for an appeal was Wednesday, January 12, 2005 – 33 days after the decision was served by mail. As specified in the regulations, a properly prepared document is filed on the date it is received by Citizenship and Immigration Services (CIS).

An application or petition received in a [CIS] office shall be stamped to show the *time and date of actual receipt* and . . . *shall be regarded as properly filed when so stamped*, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted.”

8 C.F.R. § 103.2(a)(7). (Emphasis added.) The petitioner’s appeal (Form I-290B), accompanied by a letter dated January 13, 2005, bears a receipt stamp showing that it was received by the California Service Center on Friday, January 14, 2005 at 6:21 p.m. That was two days after the deadline for filing an appeal. The regulation at 8 C.F.R. § 103.3 (a)(2)(v)(B)(1) provides that “[a]n appeal which is not filed within the time allowed must be rejected as improperly 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. § 103.3 (a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

Since the appeal was not timely filed with the service center, it must be rejected.

ORDER: The appeal is rejected.