

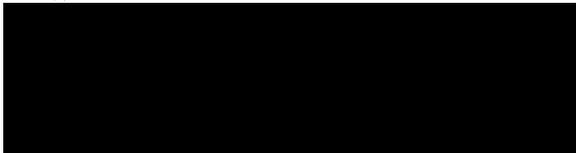
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U.S. Citizenship
and Immigration
Services

D6



FILE:



WAC 05 112 53290

Office: CALIFORNIA SERVICE CENTER

Date: DEC 13 2005

IN RE:

Petitioner:

Beneficiary:



PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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, Director
Administrative Appeals Office

DISCUSSION: DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be rejected as untimely filed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Syria, as the fiancé of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the petition after determining that the petitioner had failed to establish that she and the beneficiary had personally met within the two-year period preceding the date of filing the petition, as required by section 214(d) of the Act. He also found that the petitioner had failed to establish that she qualified for an exemption from this requirement. *Decision of the Director*, dated June 29, 2005.

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 with the office that issued the denial within 30 days of service of the decision. If the decision is mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

As already noted, the record indicates that the director issued his decision on June 29, 2005 and informed the petitioner that she had 33 days to file an appeal with the Service Center. The record indicates that the appeal was received by the Service Center on September 8, 2005, 71 days after the director denied the petition. Therefore, the petitioner has not met the filing requirements for an 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 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 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.

The AAO notes, however, that the petitioner, on appeal, indicates that she and the beneficiary have now met. Accordingly, she may file a new Form I-129F on behalf of the beneficiary so that a new two-year period in which the parties are required to have met will apply.

ORDER: The appeal is rejected.