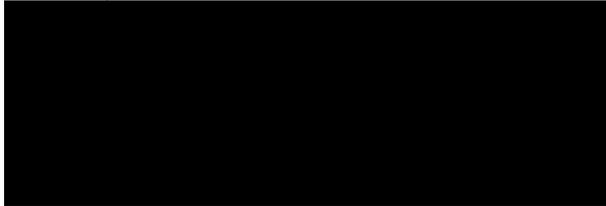




U.S. Citizenship
and Immigration
Services

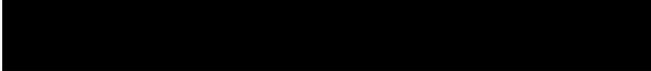
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



DJ

File: SRC 04 168 51897 Office: TEXAS SERVICE CENTER Date: **NOV 28 2005**

IN RE: Petitioner: 
Beneficiary: 

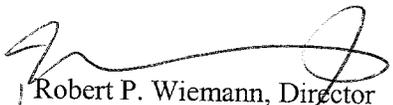
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Director
Administrative Appeals Office

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

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 where the unfavorable decision was made within 30 days after service of the decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on June 26, 2004. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal, and instructed the petitioner to file the appeal with the Texas Service Center. The record shows that the Form I-290B were improperly submitted to the AAO on July 28, 2004 and returned to the petitioner on July 29, 2004. According to the date stamp on the Form I-290B Notice of Appeal, it was received by CIS as properly filed on August 10, 2004, or 45 days after the decision was issued. 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. Review of the record indicates that the appeal does not meet the requirements of a motion to reopen or a motion to reconsider.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.