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**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



D-7

File: SRC 04 088 51800 Office: TEXAS SERVICE CENTER Date: JUL 06 2007

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:



**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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director of the Texas Service Center denied the nonimmigrant visa petition and the matter 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 regulation at 8 C.F.R. § 103.3(a)(2)(i) 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. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) requires the AAO to reject untimely appeals. The record indicates that the decision of the director was mailed on March 26, 2004. Counsel for the petitioner attempted to file an appeal on April 23, 2004, but the Texas Service Center properly rejected the appeal because counsel to the petitioner failed to sign the Form I-290B. The Texas Service Center promptly returned the appeal documents along with a rejection notice. The appeal was filed with an executed Form I-290B on May 5, 2004, 40 days after the decision was mailed. Thus, the appeal was not timely filed.

The regulation at 8 C.F.R. § 103.2(a)(1) requires that all documents submitted to a service center must be executed and filed in accordance with the instructions on the form. Further, 8 C.F.R. § 103.2(a)(7) provides that “[a]n application or petition which is not properly signed . . . shall be rejected as improperly filed” and that “[r]ejected applications and petitions . . . will not retain a filing date.” Therefore, the attempt to file an appeal with an unsigned I-290B on April 23, 2004 did not extend the time to file a properly executed appeal beyond the 33<sup>rd</sup> day.

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.<sup>1</sup>

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<sup>1</sup>It must be noted that a review of Citizenship and Immigration Services records indicates that this beneficiary is also the beneficiary of an approved immigrant petition and has adjusted status to that of a permanent resident on May 27, 2005. While the petitioner has not withdrawn the appeal in this proceeding, it would appear that the beneficiary is presently a permanent resident and the issues in this proceeding are moot. Therefore, if this appeal were not being rejected as untimely, it would be dismissed as moot.

Moreover, according to Texas state corporate records, the petitioner's corporate status in Texas is not in good standing. Therefore, as the State of Texas has forfeited the petitioner's corporate privileges, the company can no longer be considered a legal entity in the United States. If this appeal were not being rejected, this would also call into question the petitioner's continued eligibility for the benefit sought.