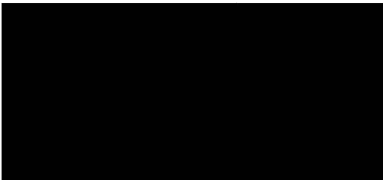




U.S. Citizenship
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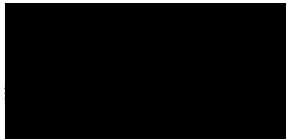
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PUBLIC COPY



File: WAC 03 136 51562 Office: CALIFORNIA SERVICE CENTER Date: APR 07 2006

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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.

Mari Jensen

Robert P. Wiemann, Director
Administrative Appeals Office

APR 07 06 - 01 B2 203

DISCUSSION: The Director, California Service Center, denied the immigrant visa petition. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) determined that the appeal was not filed in a timely manner. The AAO rejected the appeal without rendering a decision. The matter is now before the AAO on a motion to reconsider. The motion will be rejected.

The director denied the petitioner on November 5, 2004. On December 15, 2004, the petitioner filed an appeal seeking review of the director's decision. After reviewing the record, the AAO rejected the appeal as the appeal had not been filed in a timely manner. Any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The petitioner has now filed a motion seeking to reopen the appeal that was rejected as untimely filed based on his assertion that his initial submission of the appeal to the AAO was not in error. The petitioner relies on instruction 4 on the back of the Form I-290B Notice of Appeal¹ and the second paragraph under "SEE ATTACHMENT" on director's cover page.²

As noted in our previous decision, the petitioner's appeal was not received by the California Service Center until December 15, 2004, or 40 days after the director's decision was issued. Any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1). The petitioner has now filed a motion seeking to reopen the appeal that was rejected as untimely filed.

As the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reopened in this proceeding. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Because the disputed decision was rendered by the director, the AAO has no jurisdiction over this motion and the motion must be rejected.

ORDER: The motion is rejected.

¹ Instruction 1, however, states:

Filing. You must file your appeal with the Immigration and Naturalization Service (INS) [now Citizenship and Immigration Services (CIS)] which made the unfavorable decision within 30 calendar days after service of the decision (33 days if your decision was mailed). The date of service is normally the date of the decision. Do not send your appeal director to the Administrative Appeals Unit (AAU). Submit an original appeal only. Additional copies are not required.

² The *first* paragraph under "SEE ATTACHMENT," however, states:

The petitioner may, if he or she wishes, appeal the Director's decision using the enclosed Notice of Appeal to the Administrative Appeals Office (AAO), Form I-290B. The petitioner must submit such an appeal to **THIS OFFICE** with a filing fee of \$110.00. Do NOT send the appeal directly to the AAO. If the petitioner does not file an appeal within the time allowed, this Decision is final.