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U.S. Citizenship
and Immigration
Services

B4

File: WAC 02 023 55463 Office: CALIFORNIA SERVICE CENTER Date: APR 04 2005

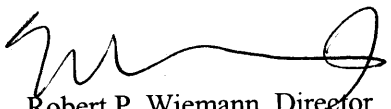
IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. After considering the petitioner's appeal of the adverse decision, the Administrative Appeals Office (AAO) remanded the case and instructed the director to issue a new decision after allowing the petitioner sufficient time to provide any additional evidence regarding the issues discussed in the AAO's remand. The director has since issued a new denial in response to which the petitioner has filed an appeal. The appeal will be rejected as untimely filed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the appeal within 30 days of service of the unfavorable 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 motion 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 February 26, 2004. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Although counsel dated the appeal March 29, 2004, it was received by CIS on March 31, 2004, 34 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)(1) states that an appeal which is not filed within the time allowed must be rejected as improperly filed. Accordingly, the appeal in the instant case will be rejected as 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.

ORDER: The appeal is rejected as untimely filed.