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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
1500 L Street, AAO, 20 Mass., 3/F
425 I Street N.W.
Washington, D.C. 20536



File: LOS214F1226

Office: LOS ANGELES, CALIFORNIA

Date:

NOV 05 2003

IN RE: Petitioner:



Petition: Petition for Approval of School for Attendance by Nonimmigrant Students under Section 101(a)(15)(M)(i) of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(15)(M)(i)

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.

A handwritten signature in cursive script, appearing to read "R. King".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Petition for Approval of School for Attendance by Nonimmigrant Students (Form I-17) was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the matter will be remanded to the district director for further consideration and the entry of a new decision.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) indicates that appeals must be filed within 30 days after the service of the decision. The record indicates that the district director's denial was mailed on July 30, 2003. The appeal was filed on September 12, 2003, 44 days after the decision was mailed. Thus, the appeal was not timely filed.

It is noted that the district director erroneously allowed the petitioner to file the appeal. The district director's error does not, and cannot, supersede the regulation regarding the time allotted to file 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 as described in 8 C.F.R. § 103.5(a)(2), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

Furthermore, the regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Review of the record indicates that the appeal meets this requirement. The petition will be remanded to the district director for consideration as a motion to reopen.

ORDER: The appeal is rejected. The matter is remanded to the district director to be considered as a motion to reopen.