U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 01 276 56984 Office: CALIFORNIA SERVICE CENTER Date: APR 26 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

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 immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director considered the petitioner's response, received February 19, 2002, to the request for evidence, dated November 26, 2001 (RFE), and considered that the petitioner did not submit any evidence of the ability to pay the proffered wage. Based on the evidence of record, the director concluded that the petitioner did not establish the ability to pay the proffered wage at the priority date and continuing until the beneficiary obtains lawful permanent residence. The director denied the petition in a notice of decision (NOD) dated March 27, 2002.

Under 8 C.F.R. § 103.3(a)(2)(i), the time for appeal is 30 days from the service of the NOD. An additional three (3) days are allowed for the service by mail herein. 8 C.F.R. § 103.5a(c)(1).

The director issued the NOD on March 27, 2002, but received the appeal more than 33 days afterwards, on May 1, 2002. In fact, counsel's certified mail receipt and envelope show that he mailed the appeal on the 33rd day, and it was filed on the 35th day. Counsel completed no action within the 30 days for appeal, which expired on April 26, 2002, and failed to ensure the appeal reached the AAO by the 33rd day, which expired on April 29, 2002.

Provisions of 8 C.F.R. § 103.3(a)(2)(v) state, with reference to Citizenship and Immigration Services (CIS), formerly the Service or the INS:

> *Untimely appeal-- (1) Rejection without refund of filing fee.* An appeal which is not filed in the time allowed must be rejected as improperly filed. In such a case, any filing fee [CIS] has accepted will not be refunded.

Counsel did not file the appeal within the time allowed, and it must be rejected as an improperly filed appeal.

ORDER: The appeal is rejected.