



U.S. Department of Justice  
Immigration and Naturalization Service

B2

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



PUBLIC COPY

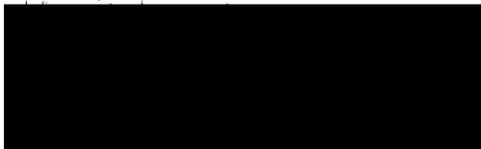
File: [Redacted] Office: HOUSTON DISTRICT

Date: AUG 28 2001

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as an Other Worker Pursuant to § 203(b)(3)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)(A)(iii).

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
Robert P. Wiemann, Acting Director  
Administrative Appeals Office

Aug 2301\_03B2203

**DISCUSSION:** The preference visa petition was initially approved by the Director, Texas Service Center. Pursuant to the Application to Adjust Status (Form I485) filed on behalf of the beneficiary, the District Director, Houston District, served the petitioner with notice of derogatory information. The district director ultimately revoked approval of the Immigration Petition for Alien Worker (Form I-140). The matter is now before the Associate Commissioner for Examinations on appeal. The case will be remanded for further consideration.

The petitioner is a private household. It seeks to employ the beneficiary permanently in the United States as a live-in child monitor. As required by statute, the petition was accompanied by certification from the Department of Labor. The district director stated that an adjustment interview was conducted, and after consideration, the approval of the petition was revoked on April 1, 1998. The revocation was based on the finding that the beneficiary was not working for the petitioner.

The appeal was filed on May 13, 1998, 42 days after the decision was rendered. According to the pertinent regulations, the appeal was not timely filed. 8 C.F.R. 205.2(d) states that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. The notice of revocation erroneously stated that the petitioner could file an appeal within 33 days. Nevertheless, the director's error does not supersede the pertinent regulations.

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 the requirements of 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.

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. Because the disputed decision was rendered by the district director, the AAU has no jurisdiction over this motion. The case must be remanded to the district director for a decision pursuant to the regulations governing motions to reconsider. Because the District Director, Houston District did not have the jurisdiction to revoke the I-140, he must reopen the case on a Service Motion to Reopen and remand it to the Center Director, Texas Service Center for his consideration.

**ORDER:**

The decision of the district director is withdrawn. The petition is remanded to the district director for further action in accordance with the foregoing. In the event that a new decision is rendered which is adverse to the petitioner, the decision is to be certified to the Associate Commissioner for Examinations for review.