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U.S. Department of Justice  
Immigration and Naturalization Service

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



File: [Redacted] Office: Vermont Service Center

Date: 18 JUN 2009

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

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:



Public Copy

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.

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 that 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 that 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, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was initially approved by the Director, Vermont Service Center. On the basis of new information received and on further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and his reasons therefore, and ultimately revoked the approval of the petition on November 8, 2001. The matter is now before the Associate Commissioner for Examinations on appeal. The matter will be remanded for further consideration.

The regulation at 8 C.F.R. 205.2(d) indicates that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. The notice of revocation advised the petitioner of the 15-day deadline. The appeal was filed on December 12, 2001, days after the decision was rendered. Thus, the appeal was not timely filed. We note that the Form I-290B Notice of Appeal contains a section reading "This appeal will be rejected as untimely if it is not received at a Service office on or before \_\_\_\_\_." Into the blank space, the director inadvertently stamped "DEC 23 2001" instead of "NOV 23 2001." Nevertheless, the director's error cannot and 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 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. Review of the record indicates that the appeal appears to meet the requirements of a motion to reconsider.

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, in this case, the disputed decision was rendered by the director, the Administrative Appeals Office has no jurisdiction over this motion and the case must be remanded to the director for a decision pursuant to the regulations governing motions to reopen.

We note that the record of proceeding contains two immigrant visa petitions. The petition that was approved and revoked, and which is the subject of the present matter, sought to classify the petitioner as an alien of extraordinary ability under section 203(b)(1)(A) of the Act. Another petition, seeking to classify the petitioner as an alien of exceptional ability under section 203(b)(2) of the Act, was denied due to abandonment (apparently owing to the approval of the other petition). Therefore, the arguments on motion should be considered in the context of section 203(b)(1)(A), rather than section 203(b)(2), of the Act.

**ORDER:** The petition is remanded to the director for further action in accordance with the foregoing.