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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 01 2004

IN RE: Petitioner:
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)

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, California Service Center. On the basis of 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 the reasons therefore, and ultimately revoked the approval of the petition on February 6, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The regulation at 8 C.F.R. § 205.2(d) provides that the affected party must "appeal the decision to revoke the approval within 15 days after the service of notice of the revocation." If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b). 8 C.F.R. § 1.1(h) explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

The record indicates that the director issued the decision on February 6, 2004. It is noted that the director properly gave notice to the petitioner that she had 18 days to file the appeal. The petitioner's appeal in this case was not properly filed until March 4, 2004, or 27 days after the director's decision was issued. Accordingly, the appeal was 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.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.