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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 10 2006
WAC 98 130 53166

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)

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 Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke (NOIR), and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The regulation requires that an appeal from the revocation of a petition must be filed within 15 days after the service of the notice of revocation. 8 C.F.R. § 205.2(d). If the notice was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b).

The record in this case indicates that the director issued the revocation decision on July 20, 2004. It is noted that the director improperly gave notice to the petitioner that his appeal must be filed within 33 days of the revocation decision. The director's improper notice of appeal rights does not extend the regulatory requirement that the appeal of a revocation decision issued by mail must be filed within 18 days. Citizenship and Immigration Services (CIS) received the petitioner's Notice of Appeal on August 23, 2004 or 33 days after the director's decision was issued. The appeal was thus 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.

The appeal was untimely filed and consequently must be rejected.

ORDER: The appeal is rejected.