

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



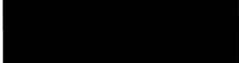
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B4



File:



WAC 01 277 53613

Office: CALIFORNIA SERVICE CENTER

Date: DEC 27 2006

IN RE:

Petitioner:

Beneficiary:



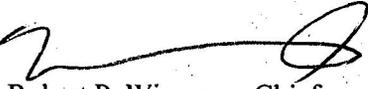
Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

SHAHLA KHAN
14 WALL STREET, 20TH FL.
NEW YORK, NY 10005

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, Chief
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was initially approved on November 21, 2002. Upon further review, the Director, California Service Center, determined that the petitioner failed to establish eligibility at the time of filing and properly issued a notice dated December 6, 2005 informing the petitioner of Citizenship and Immigration Services' (CIS) intent to revoke the prior approval of the petition. The approval was ultimately revoked in a final decision dated February 16, 2006. The service center rejected the petitioner's subsequent appeal as untimely filed. The matter is currently before the Administrative Appeals Office (AAO) for review. The AAO affirms the director's finding regarding the untimely filing and rejects the appeal.

The regulation at 8 C.F.R. § 103.3(a)(2)(iv) states the following:

If the reviewing official will not be taking favorable action or decides favorable action is not warranted, that official shall promptly forward the appeal and the related record of the proceeding to the AA[O] in Washington, D.C.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) further 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).

In the present matter, the director declined to treat the late appeal as a motion. However, instead of forwarding the matter to the AAO, the director found that the appeal was untimely filed and rejected it. Despite the director's accurate finding, the power to take any action with regard to an appeal rests with the AAO. The director lacks jurisdiction to consider any matter regarding an appeal, including the timely or untimely filing thereof. Accordingly, the AAO hereby withdraws the director's rejection of the appeal and issues its own proper finding.

In order to properly file an appeal of a revocation, the regulation at 8 C.F.R. § 205.2(d) provides that the affected party must file the appeal within 15 days of service of the unfavorable decision.

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on February 16, 2006. It is noted that the director properly gave notice to the petitioner that it had 15 days to file the appeal with an additional three days provided to any decision that is mailed.

The petitioner in the instant matter made its first attempt to file an appeal on March 14, 2006, which is 26 days after the director issued the notice of revocation. As the petitioner improperly submitted the appeal directly to the AAO, the AAO returned the petitioner's appeal with instructions regarding proper submission. The petitioner subsequently resubmitted the appeal, which was received on March 24, 2006, or 36 days after

the decision was issued. Therefore, neither of the petitioner's attempts would have resulted in a timely filed appeal.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(I) states that an appeal which is not filed within the time allowed must be rejected as improperly filed. Accordingly, the appeal in the instant case will be rejected as untimely filed.

ORDER: The appeal is rejected as untimely filed.