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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

[Redacted]

File: [Redacted] Office: CALIFORNIA SERVICE CENTER

Date: **AUG 19 2002**

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

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

Public Copy

IN BEHALF OF PETITIONER:

[Redacted]

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

Helen E. Crawford Jr.
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, California 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 preference visa petition, and his reasons therefore, and ultimately revoked approval of the Immigration Petition for Alien Worker (Form I-140) on December 30, 1999. The matter is now before the Associate Commissioner for Examinations on appeal. The case will be remanded for further consideration.

The petitioner is a bakery. It seeks to employ the beneficiary permanently in the United States as a pastry chef. As required by statute, the petition was accompanied by certification from the Department of Labor. The petition was approved on October 18, 1996. The director stated that an adjustment interview was conducted, and after consideration, the approval of the petition was revoked on December 30, 1999. The revocation was based on the finding that the petitioner had not established that the beneficiary had the requisite experience as a pastry chef.

The appeal was filed on January 27, 2000, 28 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.

8 C.F.R. 103.5(a)(2) states "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

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 director, the AAO has no jurisdiction over this motion. The case must be remanded to the director for a decision pursuant to the regulations governing motions to reopen.

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