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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 I Street, N.W.

CIS, AAO, 20 Mass, 3/F

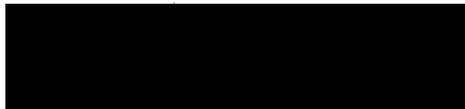
Washington, DC 20536



File: EAC 99 126 50157 Office: VERMONT SERVICE CENTER

Date: **DEC 12 2003**

IN RE: Petitioner:
Beneficiary:



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)

ON BEHALF OF PETITIONER:



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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was initially approved by the Director, Vermont Service Center. The director then received a consular memorandum and investigative report of May 25, 2000 (the consular investigation), indicating that the beneficiary did not possess the skills or experience exacted by the Application for Alien Employment Certification (Form ETA 750). Upon the review of the record, the director determined that the petitioner was not eligible for the benefit and served the petitioner with a notice of intent to revoke the approval of the petition (NOIR). The director issued a notice of revocation (NOR), the petitioner appealed, and the matter is now before the Administrative Appeals Office.

The petitioner responded to the NOIR, dated October 27, 2000, with testimonials to the beneficiary, but no dates of employment to support three (3) years of experience. The director concluded that the beneficiary did not meet the qualifications for the position, as set forth in the Form ETA 750, and revoked the petition in the NOR, dated April 4, 2001.

The petitioner appealed on May 7, 2001 and states that the appeal was timely filed on May 4, 2001. To the contrary, 8 C.F.R. § 205.2(d) allows 15 days after the service of the NOR to file an appeal. An additional three (3) days are given for the service by mail herein, for a total of 18 days. 8 C.F.R. § 103.5a(c)(1).

The director issued the NOR on April 4, 2001, but received the appeal on May 7, 2001, more than the allowed 18 days afterwards.

Provisions of 8 C.F.R. § 103.3(a)(2)(v) state, with reference to Citizenship and Immigration Services (CIS), formerly the Service or the INS:

(B) Untimely appeal-- (1) Rejection without refund of filing fee. An appeal which is not filed in the time allowed must be rejected as improperly filed. In such a case, any filing fee [CIS] has accepted will not be refunded.

The appeal was untimely and must be rejected as improperly filed.

ORDER: The appeal is rejected.