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U.S. Citizenship  
and Immigration  
Services

*Blo*



FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 03 2004**

IN RE:

Petitioner:

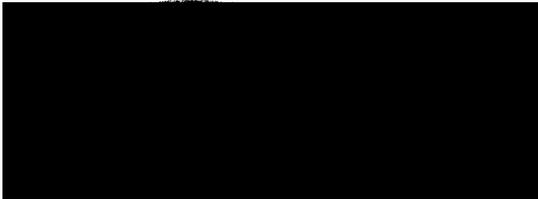
Beneficiary:



PETITION:

Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 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 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, Vermont Service Center, initially approved the employment-based preference visa petition. Upon further review, the director served the petitioner with notice of intent to revoke the approval of the petition and, ultimately, revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director considered the petitioner's response to the notice of intent, received December 20, 2001, concluded that the petitioner had not demonstrated the ability to pay the proffered wage at the priority date, continuing until the beneficiary obtains lawful permanent residence, and revoked the approval of the I-140 in a decision issued January 29, 2002.

In order to file a timely appeal from a revocation, the regulation at 8 C.F.R. § 205.2(d) allows the petitioner 15 days from the service of the notice of revocation. An additional three (3) days are allowed for the service by mail. *See* 8 C.F.R. § 103.5a(b).

The director issued the decision on January 29, 2002, and Citizenship and Immigration Services (CIS) received the appeal on March 1, 2002, or 31 days after the decision was issued. The AAO notes that the director gave notice of the wrong period for the appeal of a notice of revocation. The error of the director cannot, however, supersede the plain terms of the regulation or bind the AAO to set it aside. Therefore, the appeal was untimely filed.

A further regulation stipulates that, if an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The official who made the last decision in the proceeding has jurisdiction over a motion. *See* 8 C.F.R. § 103.5(a)(1)(ii). In this case, the director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

The appeal was untimely and must be rejected.

**ORDER:** The appeal is rejected.