



U.S. Citizenship
and Immigration
Services

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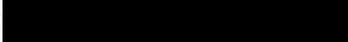
MAY 21 2004



FILE: 

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner: 
Beneficiary: 

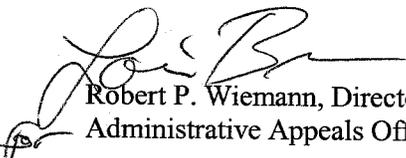
PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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DISCUSSION: The immigrant visa petition approval was revoked by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The petition will be remanded with instructions.

The I-140 petition was initially approved. Subsequently, on the basis of a review of information in the beneficiary's alien registration files, the director determined that the petitioner was not eligible for the benefit. The director therefore served the petitioner with a notice dated June 20, 2003 of the director's intent to revoke the approval of the visa petition. The petitioner submitted a response which was received by the director on July 16, 2003. In a notice of revocation (NOR) dated October 29, 2003 the director revoked the approval of the petition.

In the NOR the director stated that any appeal from the decision must be filed within 30 days of the date of the notice, plus three days where service is by mail, for a total of 33 days. But the director erred in stating the period for appeal as 30 days. Under 8 C.F.R. § 205.2(d), the time allowed for appeals of revocations is 15 days from the service of the NOR. An additional three (3) days are allowed where service is by mail. 8 C.F.R. § 103.5a(b).

The director issued the NOR on October 29, 2003, but received the appeal more than 18 days afterwards, on November 28, 2003.

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states in relevant part:

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 not filed in the time allowed, and it must therefore be rejected.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states in relevant part

Untimely appeal treated as motion. If an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

Under 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. In this case, since the director rendered the disputed decision, the AAO has no jurisdiction to treat this appeal as a motion. The case must be remanded to the director for a decision pursuant to the regulations governing motions to reopen

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