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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship
and Immigration
Services

B6

[redacted]

FILE: WAC 99 149 52274 Office: CALIFORNIA SERVICE CENTER Date: SEP 01 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant 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:

[redacted]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, California Service Center. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. The director served the petitioner with notice of intent to revoke the approval of the preference visa petition, together with his reasons therefore. The director subsequently revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is an importer/retailer of silks, apparel, and groceries. It seeks to employ the beneficiary permanently in the United States as an alteration tailor. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition.

The petition was initially approved on July 29, 1999. Following a review of the record, including a recommendation from the U.S. embassy in New Delhi, India, the director issued a notice of intent to revoke the petition on October 3, 2002. The petitioner's response and subsequent submission of additional evidence failed to convince the director to revise his decision and the petition's approval was revoked on December 5, 2002.

The petitioner filed an appeal. As noted in the director's decision, the regulation at 8 C.F.R. § 205.2(d) provides that a petitioner "may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation." When computing a period of time for taking any action, including taking an appeal from a decision, the term *day* includes Saturdays, Sundays, and legal holidays. 8 C.F.R. § 1.1(h). Three additional days are provided if the decision was mailed. In this case, as advised by the director's decision, the petitioner's appeal was due 18 days following the date of the notice of revocation, or by December 23, 2002. The record shows that it was not received until January 2, 2003.

The regulation at 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 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). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

Accordingly, the petitioner's appeal is rejected as untimely filed.

ORDER: The petitioner's appeal is rejected.