

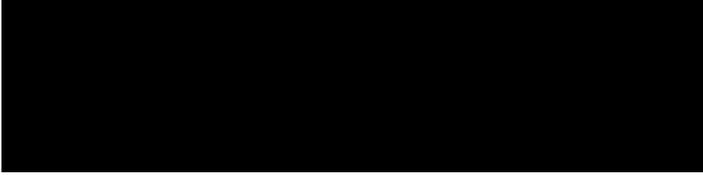
PUBLIC COPY

identifying data deleted to
prevent clear & unambiguous
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

MAR 08 2005



FILE: WAC-99-248-54079 Office: CALIFORNIA 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 employment-based preference visa petition was initially approved by the Director, California Service Center. In connection with inconsistent and/or contradictory information obtained by the consular officer in Ankara Turkey during the beneficiary's interview to obtain admission, the consulate returned the visa to the service center. The director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director 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 as untimely filed.

In order to properly file an appeal of a revoked petition, the regulation at 8 C.F.R. § 205.2(d) provides that the affected party must file the complete appeal within 15 days after service of the unfavorable decision.

The record indicates that the director issued the decision on June 18, 2003. It is noted that the director properly gave notice to the petitioner that it had 15 days to file the appeal. Although counsel dated the appeal July 15, 2003, it was received by CIS on July 16, 2003, or 28 days after the decision was issued¹. Accordingly, the appeal was untimely filed.

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.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ It is noted that counsel submitted a copy of the decision he received with a time and date stamp from his office indicating that his office received the unfavorable decision on June 23, 2003. Even utilizing that date, however, the appeal was received 23 days later, which still is too late for consideration.