

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

Ble



FILE:

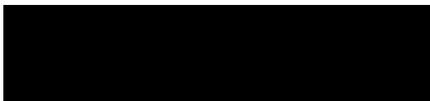
WAC.00 109 51231

Office: CALIFORNIA SERVICE CENTER

Date: MAY 18 2005

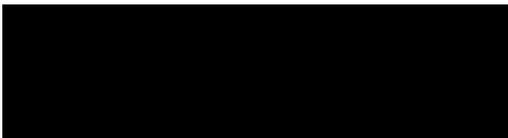
IN RE:

Petitioner:  
Beneficiary:



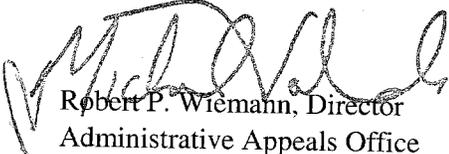
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



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 immigrant 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. 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 auto body and paint firm. It sought to employ the beneficiary permanently in the United States as an automobile mechanic. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

The record indicates that the Immigrant Petition for Alien Worker (I-140) was initially filed on March 1, 2000. It was approved on September 17, 2000. The alien beneficiary filed an application to adjust her status to that of lawful permanent resident. Following the receipt of information from both the petitioner and the beneficiary relevant to the beneficiary's application to adjust to permanent resident status, the director concluded that the I-140 was approved in error and issued a notice of intent to revoke the petition on July 31, 2003. The director concluded that the petitioner had failed to establish its continuing ability to pay the proffered wage as of the visa priority date. The petitioner was afforded thirty days to offer additional evidence or argument in opposition to the proposed revocation. The petitioner did not respond. The petition's approval was subsequently revoked on February 23, 2004, pursuant to section 205 of the Act, 8 U.S.C. § 1155.

The petitioner filed an appeal. 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." Three additional days are provided if the notification of revocation was mailed. If the last day of the designated period falls on a Saturday, Sunday or a legal holiday, the period will run until the end of the next day, which is not a Saturday, Sunday, or legal holiday. *See* 8 C.F.R. § 1.1(h).

In this case, 18 days from the date of the director's decision to revoke the petition's approval fell on Friday, March 12, 2004. The record shows that it was not received until Thursday, March 18, 2004. It is the petitioner's burden to file a timely appeal. An untimely appeal shall be rejected as improperly filed. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

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.