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U.S. Citizenship
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 18 2005
WAC 00 014 53775

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

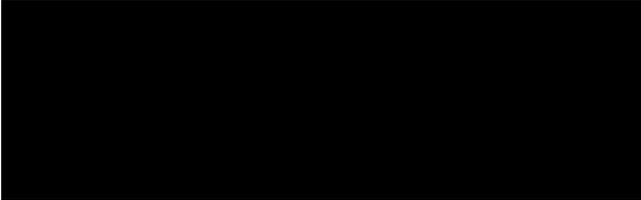
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to
Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 and upon referral from the Los Angeles district office, 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 dismissed.

The petitioner is a dance and music school. It sought to employ the beneficiary permanently in the United States as a music teacher. 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 approved on September 27, 2000. The director subsequently concluded that the I-140 was approved in error and notified the petitioner of his intent to revoke the petition on August 22, 2003. The petitioner's response failed to convince the director to revise his decision and the petition's approval was revoked on February 25, 2004, pursuant to section 205 of the Act, 8 U.S.C. § 1155.

The petitioner filed an appeal.¹ 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 Sunday, March 14, 2004. Therefore, the appeal was due the following day, Monday, March 15, 2004. The record shows that it was not received until March 16, 2004. 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.

¹ Although the record contains a notice of entry of appearance as attorney or representative (Form G-28) filed in 1998 on behalf of the petitioner, the petitioner filed the appeal itself. A copy of this decision will be provided to counsel.