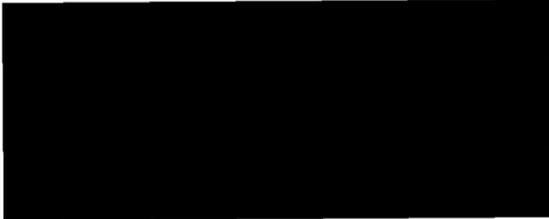




U.S. Citizenship
and Immigration
Services

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FILE: EAC-01-129-52944 Office: VERMONT SERVICE CENTER Date: JUL 25 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Vermont Service Center. In connection with the beneficiary's attempt to obtain the approved visa through the American Consulate in Damascus, Syria, the acting center 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.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

The regulation at 8 C.F.R. § 205.2(d) states in pertinent part: "[t]he petitioner or self-petitioner may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation." 8 C.F.R. § 103.5a(b) provides an additional three (3) days if the decision was mailed.

The record indicates that the director issued the NOR on July 29, 2004. It is noted that the director properly gave notice to the petitioner that it had 18 days from the date of the decision to file the appeal. Although counsel for the petitioner dated the appeal August 12, 2004, it was received by Citizenship and Immigration Services (CIS) on August 25, 2004, 27 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 The record of proceeding indicates that the Form I-290B, Notice of Appeal, was filed with the service center on August 16, 2004, however, the appeal was rejected by the director because it was not properly signed in violation of 8 C.F.R. §§ 103.2(a)(1) and (2) and therefore, could not be accepted.