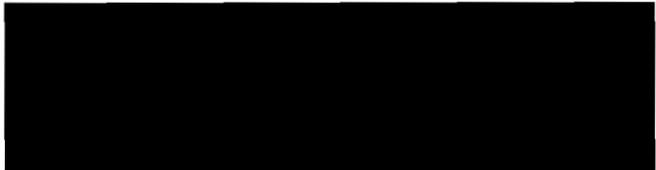




U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY**

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FILE: EAC-01-050-50601 Office: VERMONT SERVICE CENTER Date: JUN 13 2006

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

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Vermont Service Center. In connection with information obtained by the consular officer in Manila, Philippines during the beneficiary's interview to obtain admission, the consulate returned the visa to the service center finding that the beneficiary was not qualified for the proffered position. 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 May 16, 2005. It is noted that the director properly gave notice to the petitioner that it had 15 days to file the appeal. Although the petitioner dated the appeal May 23, 2005, it was received by Citizenship and Immigration Services (CIS) on June 1, 2005, or 16 days after the decision was issued. 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.