

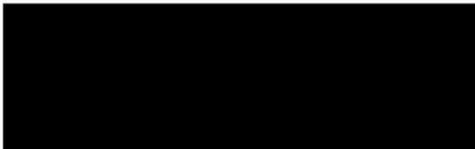
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FILE: [REDACTED]
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Office: CALIFORNIA SERVICE CENTER

Date: DEC 11 2007

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, Chief
Administrative Appeals Office

CC: [REDACTED]

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, California Service Center. The director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). The petitioner responded to the NOIR on June 6, 2006. In a Notice of Revocation (NOR) dated July 20, 2006, the director ultimately revoked the approval of the Immigrant Petition for Alien Worker. The matter is now before the Administrative Appeals Office on appeal. The appeal will be rejected as untimely filed.

The nature of the petitioner's business is maintenance and landscaping. It seeks to employ the beneficiary permanently in the United States as a landscape gardener. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary is qualified for the classification sought because he did not have three years of high school education as required by the labor certification,¹ notwithstanding prior counsel's assertion which combined the beneficiary's educational background and employment experiences.

The appeal was filed on Monday, August 21, 2006, 32 days after the decision was rendered. According to the pertinent regulations, the appeal was not timely filed. The regulation at 8 C.F.R. § 205.2(d) states that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b). The notice of revocation advised the petitioner of the 18-day deadline.

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 beneficiary admitted before an immigration officer in his adjustment interview that he had only completed two years of high school.