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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAR 01 2007

WAC 03 010 50966

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:

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 Director of the California Service Center revoked the approval of the petitioner's employment-based immigrant visa petition, and 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, the regulation at 8 C.F.R. § 205.2(d) provides that the affected party must file the complete appeal within 15 days of after service of the decision to revoke the approval. If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued the decision on August 24, 2005. It is noted that the director properly gave notice to the petitioner that it had 18 days to file the appeal. Although the petitioner dated the appeal September 8, 2005, it was received by Citizenship and Immigration Services (CIS) on September 13, 2005, or 20 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.