

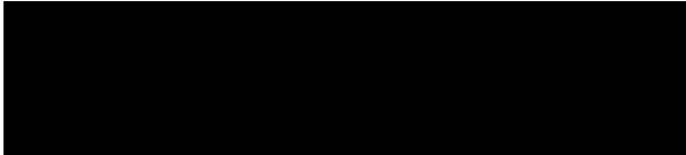


U.S. Citizenship
and Immigration
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 14 2007
WAC-03-133-50378

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

PETITION: 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:
[Redacted]

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 initially approved the employment-based preference visa petition. While adjudicating the beneficiary's application to adjust status to lawful permanent resident, the director determined the visa petition was approved in error. 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 October 12, 2006. It is noted that the director properly gave notice to the petitioner that it had 15 days to file the appeal or 18 days if the notice was received by mail. Although counsel dated the appeal December 27, 2006, it was received by Citizenship and Immigration Services (CIS) on November 6, 2006, or 25 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 record of proceeding does not contain evidence showing that circumstances beyond the control of the petitioner caused the appeal to be untimely filed. *See* 8 C.F.R. § 103.5(a)(1)(i). **The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.**

On January 11, 2007, the petitioner filed a Complaint in the Nature of Writ of Mandamus in the Central District of California complaining that the beneficiary's adjustment of status application was denied prior to the final adjudication of the instant appeal at the AAO. In light of the petitioner's complaint, the AAO is certifying the director's decision, dated October 12, 2006, the initial decision in this matter, to itself pursuant to 8 C.F.R. §§ 103.4(a)(4) and (a)(5). The petitioner is granted thirty (30) days after service of this notice to submit a brief to the AAO. After receipt of the petitioner's brief or the expiration of the thirty (30)-day timeframe, the AAO will issue a new decision. *See* 8 C.F.R. § 103.4(a)(2).

As the appeal was untimely filed, the appeal must be rejected. The director's October 12, 2006 decision is certified to the AAO and the petitioner is hereby provided thirty (30) days to submit a brief.

ORDER: The appeal is rejected. The director's decision, dated October 12, 2006, is certified to the AAO.