U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 15 2007

SRC 98 036 50122

IN RE: Petitioner: [redacted]

PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the preference visa petition. Subsequently, the director issued a 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 petition (Form I-526). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 a revocation of an 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 October 10, 2002. The appeal was received by legacy Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), with the proper fee on November 8, 2002, or 29 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.

The AAO has been holding this case in abeyance for promulgation of a regulation implementing the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. [redacted] (2002), which has yet to be published. As we have no jurisdiction in this matter, however, there is no need to continue holding this case. We note, however, that our rejection of the appeal includes no finding regarding whether the petitioner is an eligible alien as defined at section 11032(b) of the public law. Rather, that determination falls under the jurisdiction of the director.

ORDER: The appeal is rejected.