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U.S. Citizenship  
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FILE:

[REDACTED]  
SRC 97 148 51249

Office: TEXAS SERVICE CENTER Date:

OCT 15 2007

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:

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.

  
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).<sup>1</sup> 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 12, 1999. The appeal was received by legacy Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on November 8, 1999, or 27 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 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (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 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.

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<sup>1</sup> We note that the attorney who filed the Form I-526 petition was suspended from the practice of law by the Indiana Supreme Court on August 14, 2000 and was expelled from practice before the Executive Office for Immigration Review (EOIR) and CIS on September 28, 2000. EOIR, Office of the General Counsel, *List of Disciplined Practitioners*, <http://www.usdoj.gov/eoir/profcond/chart.htm> (last updated Oct. 10, 2007). Accordingly, the attorney is not authorized to represent the petitioner in these proceedings. 8 C.F.R. §§ 1.1(f) (definition of *attorney*), 103.2(a)(3).