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U.S. Citizenship
and Immigration
Services

CI

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 02 2004**

WAC 98 213 52097

IN RE:

Petitioner:

Beneficiary:

[Redacted]

PETITION:

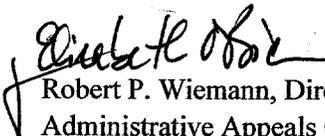
Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center initially approved the immigrant visa petition. On November 3, 2003, the director notified the petitioner of his intent to revoke approval of the petition, and subsequently exercised his discretion to revoke approval of the immigrant visa petition on December 31, 2003. 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. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued the decision on December 31, 2003. It is noted that the director properly gave notice to the petitioner that its Notice of Appeal must be filed within 15 days of the Notice of Revocation. Citizenship and Immigration Services (CIS) received the Notice of Appeal on January 29, 2004, 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 beneficiary of the petition also filed an Application to Register Permanent Residence or Adjust Status (Form I-485) that was denied by the director on December 31, 2003. There is no right of appeal of the denial of an application for adjustment of status.

ORDER: The appeal is rejected.