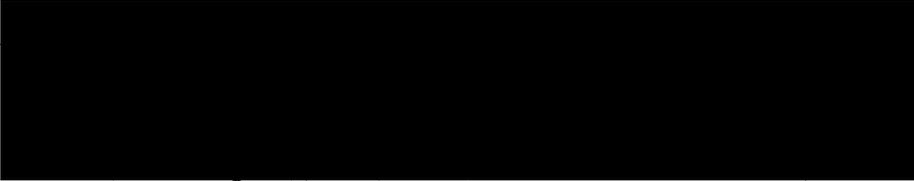


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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: NOV 26 2004
SRC 01 119 52037

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

PETITION: Immigrant 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:



PUBLIC COPY

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.

Maui Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition. Subsequently, on further review of the record, the director determined that the petition was approved in error. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and her reasons therefore, and ultimately revoked the approval of the petition on July 28, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. We must reject the appeal as untimely filed.

The regulation at 8 C.F.R. § 205.2(d) indicates that revocations of approvals must be appealed within 15 days after the service of the notice of revocation (18 days if the notice is served by mail, pursuant to 8 C.F.R. § 103.5a(b)). The appeal was filed on September 2, 2003. Thus, the appeal was not timely filed. The notice of revocation erroneously stated that the petitioner could file an appeal within 33 days. Taking into account weekends and holidays, the appeal would have met the 33-day deadline. Nevertheless, the director's error cannot and does not supersede the pertinent regulations.

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). In this instance, the director incorrectly judged the appeal to be timely and forwarded the matter to the AAO. Because the director erroneously considered the appeal to be timely, there is no evidence that the director evaluated the appeal to determine if it would qualify as a motion.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.