

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

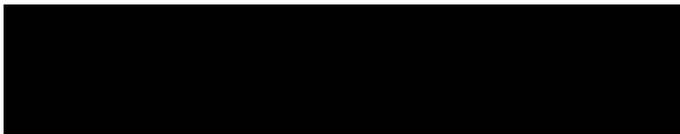
U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

C1

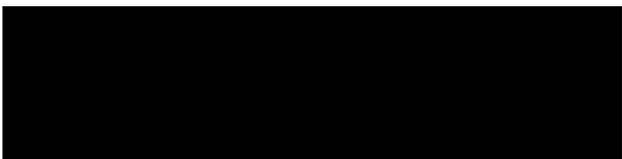


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 17 2008
WAC 05 161 53520

IN RE: Petitioner: [REDACTED]
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)

IN BEHALF OF PETITIONER:



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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a Notice of Intent to Revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected 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. 8 C.F.R. § 103.5a(b) allows an extra three days if the decision notice is served by mail.

The record indicates that the director issued the Notice of Revocation on January 15, 2008. It is noted that the director properly gave notice to the petitioner that it had 18 days to file the appeal. Counsel dated the appeal February 27, 2008, and it was received by the director on March 3, 2008, 47 days after the notice was issued. As the petitioner failed to timely appeal the director's Notice of Revocation of the visa preference classification, the appeal will be rejected. The director erroneously annotated the appeal as timely and forwarded the matter to the AAO.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 18-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected.

On appeal, counsel asserts that the Notice of Revocation was "earlier mailed to my old office address on January 16, 2008, but was mistakenly not forwarded to my new office address by the United States Postal Service."

Pursuant to 8 C.F.R. § 103.5a(a)(1), routine service may be effected by mailing a copy by ordinary mail addressed to a person at his last known address.

Counsel's failure to receive the revocation notice in a timely manner was not due to U.S. Citizenship and Immigration Services (USCIS) error as the record clearly establishes that the notice was properly served on the petitioner and counsel in compliance with 8 C.F.R. § 103.5a(a)(1). USCIS is not responsible for the inaction of the United States Postal Service.

Counsel also asserts that the revocation notice was "re-mailed to the beneficiary on February 15, 2008."

The beneficiary has no standing in this proceeding. A courtesy copy of the notice was sent to the beneficiary on February 15, 2008, as evidence that the employment-based immigrant visa petition had in fact been revoked. The beneficiary, in filing a motion to reopen for the denial of his Form I-485 Application to Register for Permanent Status, indicated that the Form I-360 had not been denied.

ORDER: The appeal is rejected.