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U.S. Citizenship
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[Redacted]

FILE:

WAC 06 122 52142

Office: CALIFORNIA SERVICE CENTER

Date: DEC 18 2008

IN RE:

Petitioner:

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:

[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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, California Service Center. Subsequently, the director issued a notice of intent to revoke the approval of the petition. In a Notice of Revocation, the director ultimately revoked the approval of the Immigrant Petition for Special Immigrant Religious Worker. 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) provides that the affected party must “appeal the decision to revoke the approval within 15 days after the service of notice of the revocation.” If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b). 8 C.F.R. § 1.1(h) explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on July 1, 2008. The notice was mailed to the petitioner’s address of record. It is noted that the director properly gave notice to the petitioner that it had 18 days to file the appeal. The record reflects that a copy of the notice was also mailed to counsel. Although a copy of the decision was later re-mailed to counsel, the record reflects that the petitioner was sent a timely notice to its address of record. In this case, the appeal was not received by the director until July 25, 2008, 24 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 18-day time limit for filing an appeal. 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.

ORDER: The appeal is rejected.