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U.S. Citizenship
and Immigration
Services

61

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: JUL 28 2004

SRC 00 036 54087

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

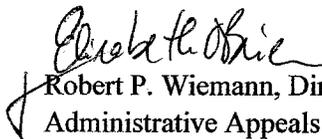
PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center initially approved the immigrant visa petition. On April 9, 2003, and again on September 10, 2003, the director notified the petitioner of her intent to revoke approval of the petition, and subsequently exercised her discretion to revoke approval of the immigrant visa petition on November 17, 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 of a revocation, the regulation at 8 C.F.R. § 205.2(d) provides that the affected party must file the complete appeal within 15 days after service of the notice of revocation. 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 November 17, 2003. It is noted that the director improperly gave notice to the petitioner that its Notice of Appeal must be filed within 33 days of the Notice of Revocation. The director's improper notice of appeal rights does not extend the regulatory requirement that the appeal of a revocation be filed within 15 days. Citizenship and Immigration Services (CIS) received the Notice of Appeal on December 15, 2003, or 26 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 regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) provides, in pertinent part, that:

For purposes of [appeals], *affected party* . . . means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

Improperly filed appeal – (A) Appeal filed by person or entity not entitled to file it – (1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. Only the affected party or attorney of record may file an appeal.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding. Therefore, the appeal has not been properly filed and 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 November 17, 2003. There is no right of appeal of the denial of an application for adjustment of status.



ORDER: The appeal is rejected.