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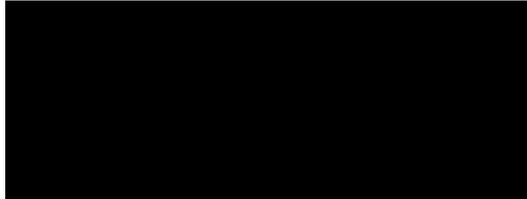
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **OCT 20 2004**

IN RE:

Petitioner:

Beneficiary:



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:



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.

for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately 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. If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b). The notice of revocation erroneously stated that the petitioner could file an appeal within 33 days. Nevertheless, the director's error cannot and does not supersede the pertinent regulations.

The director issued the decision on September 5, 2003. The appeal was filed 33 days later, on October 8, 2003. 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 record reveals no such review by the director; the adjudicator, apparently relying on the incorrect 33-day standard, indicated that the appeal was timely and forwarded the matter to the AAO. The AAO, however, has no jurisdiction over late appeals treated as motions.

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

ORDER: The appeal is rejected.