

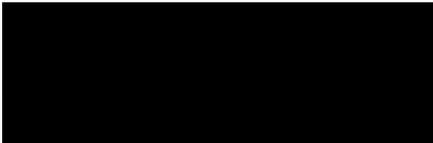
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



01

FILE: [Redacted]
WAC 01 218 54233

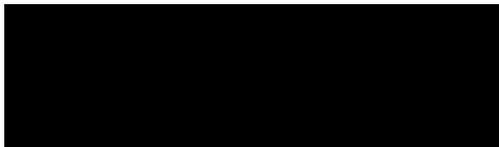
Office: CALIFORNIA SERVICE CENTER

Date: MAR 15 2005

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:



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, 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.

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 notice of revocation advised the petitioner of the 18-day deadline. The notice of revocation is dated April 5, 2004. The appeal was filed on May 3, 2004, 28 days after the decision was rendered. Thus, the appeal was not timely filed.

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 as described in 8 C.F.R. § 103.5(a)(2), the appeal must be treated as a motion, and a decision must be made on the merits of the case. Indeed, while the petitioner has submitted a Form I-290B Notice of Appeal, counsel's accompanying letter refers to this filing as a "motion."

The director erroneously indicated that the appeal was timely filed, and forwarded the matter to the AAO for review. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. Because, here, the director rendered the disputed decision, the AAO has no jurisdiction over the untimely appeal.

As the appeal was untimely filed, the appeal must be rejected. Jurisdiction over the appeal, considered as a motion, lies with the director.

ORDER: The appeal is rejected.