

identifying data deleted to
prevent identity unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



C1

FILE: [REDACTED]
LIN 04 227 50758

Office: NEBRASKA SERVICE CENTER

Date: SEP 27 2006

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:



PHOTIC COPY

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 and returned to the director for further action.

The petitioner is a religious broadcasting network. It seeks to classify the beneficiary as a 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), to perform services as a Korean web announcer. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a Korean web announcer immediately preceding the filing date of the petition.

Section 205 of the Act, 8 U.S.C. § 1155, states: “The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

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 is served by mail, the appeal deadline is 18 days. See 8 C.F.R. § 103.5a(b). The director, in the notice of revocation, erroneously stated that the petitioner could file an appeal within 33 days.¹ The director's error cannot and does not supersede the pertinent regulations.

¹ The director also erroneously instructed the petitioner to file the appeal on Form EOIR-29 rather than on Form I-290B. The petitioner, in filing the appeal, used the correct form.

The record indicates that the director issued the decision on October 18, 2005. Taking into account that November 5 and 6 fell over a weekend, any appeal filed after November 7, 2005 would be considered untimely. Citizenship and Immigration Services received the appeal on November 14, 2005, or 27 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 erroneously marked the appeal as timely and forwarded the matter to the AAO. The appeal would only have been timely if the regulations had allowed a 30-day appeal window rather than one of only 15 days. Thus, the director erred twice, once in overstating the appeal period, and again in finding the appeal to be timely.

As the appeal was untimely filed, the appeal must be rejected. We instruct the director to review the appeal, in order to determine whether it meets the regulatory requirements of either a motion to reopen at 8 C.F.R. § 103.5(a)(2), or a motion to reconsider at 8 C.F.R. § 103.5(a)(3). The initial determination of whether the untimely appeal qualifies as a motion rests with the director.

ORDER: The appeal is rejected. The director must consider whether the late appeal qualifies as a motion.