



U.S. Citizenship
and Immigration
Services

F/

[REDACTED]

FILE:

[REDACTED]

Office: ATLANTA

Date:

OCT 26 2004

IN RE:

Petitioner:

[REDACTED]

Beneficiary:

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent disclosure of unwarranted
invasion of personal privacy

DISCUSSION: The District Director, Atlanta, Georgia, initially approved the visa petition for an immediate relative. The district director notified the petitioner of her intent to revoke approval of the petition, and subsequently exercised her discretion to revoke approval of the preference visa petition on February 12, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, states: "[t]he Attorney General 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)).

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 of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b). It is noted that the district director incorrectly informed the petitioner that he had 30 days to file the appeal. Nonetheless, the AAO lacks the authority to extend the regulatory time limit on appeals.

The record indicates that the director issued the decision to revoke approval of the petition on February 12, 2004. Citizenship and Immigration Services (CIS) received the Notice of Appeal on March 12, 2004, or 29 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 district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The district director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

ORDER: The appeal is rejected.