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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

[redacted]

FILE: WAC 02 168 54100 Office: CALIFORNIA SERVICE CENTER Date: SEP 01 2004

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a convalescent hospital. It sought to employ the beneficiary permanently in the United States as a dietary cook. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had failed to establish its continuing financial ability to pay the proffered wage as of the priority date, and on March 18, 2003, denied the petition.

The petitioner filed an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the decision. When computing a period of time for taking any action, including taking an appeal from a decision, the term *day* includes Saturdays, Sundays, and legal holidays. 8 C.F.R. § 1.1(h). Three additional days are provided if the decision was mailed. In this case, as advised by the director's decision, the petitioner's appeal was due 33 days, or by April 21, 2003, a Monday. The record shows that it was not received until April 23, 2003.

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.

Accordingly, the petitioner's appeal is rejected as untimely filed.

ORDER: The petitioner's appeal is rejected.