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U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 28 2005
EAC 01 144 50085

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 employment-based immigrant visa petition was initially approved by the Director, Vermont Service Center. 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 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 notice of revocation on March 4, 2005, and received the notice of appeal on March 31, 2005, 27 days later. Accordingly, the appeal was untimely filed.

8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion 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. 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). Having no jurisdiction over this matter, we must reject the appeal as untimely and return the matter to the director for appropriate action.

ORDER: The appeal is rejected.