



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

FEB 22 2007

EAC 05 059 50813

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(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, Chief
Administrative Appeals Office

DISCUSSION: In a decision dated October 31, 2005, the Director, Vermont Service Center, approved the employment-based visa petition. The director subsequently conducted a review of the petition in connection with the beneficiary's I-485 Application to Adjust Status, determining that at the time of filing the beneficiary did not qualify for the requested immigrant visa classification. The director provided the petitioner thirty days within which to respond to the proposed revocation, and ultimately revoked the petition's approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal of Citizenship and Immigration Services' (CIS) decision to revoke approval of a petition, the regulation at 8 C.F.R. § 205.2(d) provides that the affected party must file an appeal within 15 days after service of notice of the revocation. If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued his decision revoking the petition's approval on May 12, 2006. In his decision, the director properly gave notice to the petitioner that it had 18 days, or until May 30, 2006, to file an appeal. The Form I-290B, Notice of Appeal, however, incorrectly indicates that the petitioner must file an appeal on or before June 14, 2006 in order for the appeal to be considered timely. The instant appeal was received by CIS on June 7, 2006, or 26 days after the decision was issued. Accordingly, the appeal was untimely filed.

The director's error in identifying on the Form I-290B the date on which the appeal must be filed does not overrule or supersede the regulations, which state, in pertinent part, that "[t]he petitioner . . . may appeal the decision to revoke approval within 15 days after the service of notice of the revocation." 8 C.F.R. § 205.2(d); *see also West Lake Auto Inc. v. USCIS*, 2005 WL 2994513 (D.Minn.) (confirming that the regulation at 8 C.F.R. § 205.2(d) is the controlling authority in determining the time during which an appeal of a petition's revocation must be 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 declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.