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U.S. Citizenship
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Services

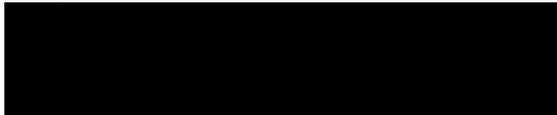
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FILE: WAC 04 156 51045 Office: CALIFORNIA SERVICE CENTER Date MAY 24 2005

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(Q)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(Q)(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Maui Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the nonimmigrant visa petition. On June 7, 2004, the director notified the petitioner of his intent to revoke approval of the petition, and subsequently exercised his discretion to revoke approval of the preference visa petition on July 30, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

Under Citizenship and Immigration Services (CIS) regulations, the approval of a Q-1 petition may be revoked on notice under four specific circumstances. 8 C.F.R. § 214.2(q)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(q)(9)(iv).

In the present matter, the director informed the petitioner of the basis for the revocation in the notice of intent to revoke, i.e., Citizenship and Immigration Services (CIS) approved the petition in error since there was insufficient evidence that the program has a cultural component and that the cultural visitor's employment or training is part of the cultural component of the international cultural exchange program. The director advised the petitioner that it had thirty days from the date of the notice to respond. The petitioner failed to respond to the notice of intent to revoke.

Under CIS regulations, the approval of a Q petition may be revoked on notice under four specific circumstances. 8 C.F.R. § 214.2(q)(9)(iii). To properly revoke the approval of a petition on notice, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(q)(9)(iv).

In the present matter, the director provided a detailed statement of the grounds for the revocation. Referring to the eligibility criteria at 8 C.F.R. § 214.2(q)(3)(iii)(B), the director reviewed the rebuttal evidence and concluded that the petitioner had not established that the program has a cultural component or that the beneficiaries' job duties meet the work requirement set forth in the regulations. Upon review, the director revoked the approval on the basis of 8 C.F.R. § 214.2(q)(9)(iii)(D): [CIS] approved the petition in error.

The AAO interprets the term "error" to be an unmitigated or absolute error, such as an approval that was granted contrary to the requirements stated in the statute or regulations. Regardless of whether there can be debate as to the legal determination of eligibility, any approval that CIS determines to have been approved contrary to law must be considered an error.

Upon review, the present petition was properly revoked as the director clearly approved the petition in error, contrary to the eligibility requirements provided for in the regulation.

In order to properly file an appeal, 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).

The record indicates that the director issued the decision to revoke approval of the petition on July 30, 2004. It is noted that the director properly gave notice to the petitioner that its Notice of Appeal must be filed within

15 days of the Notice of Revocation. CIS received the Notice of Appeal on August 18, 2004, or 19 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 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.