U.S. Department of Homeland Security
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Washington, DC 20536

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U.S. Citizenship and Immigration Services

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[redacted]

MAY 18 2004

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center initially approved the employment-based petition. Subsequently, the beneficiary applied for adjustment of status at the Houston District Office. On the basis of new information received and 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 preference visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on July 30, 2003. The matter is now before the Administrative Appeals Office (AAO) 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. The record indicates that the Notice of Revocation was mailed on July 30, 2003. The appeal was filed on August 29, 2003, 30 days after the decision was mailed. Thus, the appeal was not timely filed.

It is noted that the director erroneously allowed the petitioner 30 days to file the appeal (33 days if the notice was delivered by mail). The director's error does not, and cannot, supersede the regulation regarding the time allotted to appeal a revocation.

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.