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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: California Service Center Date: MAR 19 2003

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).

PUBLIC COPY

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision 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.

Helen E Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The approval of the preference visa petition was revoked by the Director, California Service Center. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) determined that the appeal was not filed in a timely manner. The AAO rejected the appeal without rendering a decision. The matter is now before the AAO on a motion to reconsider. The motion will be rejected and the matter will be remanded to the director.

The petitioner seeks classification for the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3). The petitioner seeks to employ the beneficiary as an Arabic typesetter.

As a result of an overseas investigation, the director properly issued a notice of intent to revoke, disclosing to the petitioner that the investigation indicated that the beneficiary's claimed overseas employer did not exist. After the director failed to match the petitioner's response to the record, the director revoked the approval of the petition. Upon determining that the petitioner had submitted a timely response, the director reopened the matter on her own motion and entered a new decision on the merits, revoking the approval in accordance with section 205 of the Act.

The director entered her decision revoking the approval on January 19, 2000. On February 22, 2000, counsel for the petitioner filed an appeal seeking review of the director's decision. After reviewing the record, the AAO rejected the appeal as the app eal had not been filed in a timely manner. Any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The petitioner has now filed a motion seeking to reopen the appeal that was rejected as untimely filed. Counsel asserts that the appeal of the director's decision should be governed by the regulation at 8 C.F.R. § 103.3.

First, it must be noted that the AAO properly rejected the appeal 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 service of the notice of revocation. The record indicates that the final notice of revocation was mailed on January 19, 2000. The appeal was filed on February 22, 2000, 34 days after the decision was mailed. Thus, the appeal was not timely filed.

Counsel's assertion that the appeal should be subject to the 30 - day deadline set by 8 C.F.R. § 103.3(a)(2) is not persuasive. The regulation at 8 C.F.R. § 205.2(d) specifically allows 15 days to file an appeal when the approval of an immigrant visa petition is

revoked on notice. Although the regulation at 8 C.F.R. § 205.2 makes reference to the regulation at part 103, this reference refers to the filing jurisdiction of the AAO and does not supersede the specific 15 -day filing deadline set by 8 C.F.R. 205.2(d).

Second, as the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reopened in this proceeding. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Because the disputed decision was rendered by the director, the AAO has no jurisdiction over this motion.

However, 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 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 regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Review of the record indicates that the previously submitted appeal meets this requirement and should have been remanded to the director.

Pursuant to 8 C.F.R. § 103.5(a)(1)(ii), the director maintains jurisdiction over this motion as the official who made the latest decision. The previously filed appeal will be remanded to the director for consideration as a motion to reopen.

ORDER: The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.