

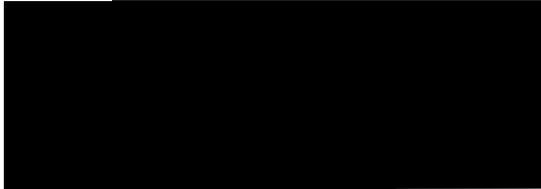


U.S. Citizenship
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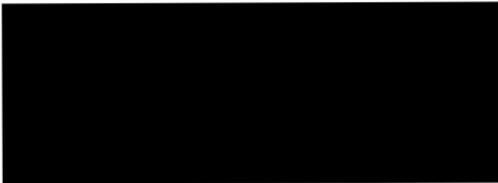
Office: VERMONT SERVICE CENTER

Date: AUG 28 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

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Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, approved the petition for an immigrant visa. Counsel concedes on appeal that following an investigation performed in connection with the beneficiary's I-485 Application to Adjust Status, the director issued a Notice of Intent to Revoke, to which the petitioner filed a response.¹ The director subsequently revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reconsider.

The petitioner filed the instant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of New York that is operating as a purchasing agent and exporter of domestic merchandise. The petitioner seeks to employ the beneficiary as its cash manager. The director ultimately revoked approval of the petition concluding that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

In order to properly file an appeal of the revocation of a petition's approval, 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 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 the decision on September 29, 2006. It is noted that the director properly gave notice to the petitioner that it had 18 days to file the appeal. Counsel dated the Form I-290B, Notice of Appeal, October 25, 2006. The appeal was received by Citizenship and Immigration Services (CIS) on October 27, 2006, or 28 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 18-day time limit for filing an appeal of the petition's 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal meets the requirements of a motion to reconsider. The director appears to erroneously rely on the amount of the beneficiary's salary in concluding that the beneficiary would not be employed as a manager or executive. Additionally, counsel suggests on appeal that the director misstated his Request for Evidence and incorrectly relied on this misstatement as a basis for the revocation of the petition's approval. Counsel further raises the issue of function manager, claiming that the beneficiary qualifies as managing a function of the petitioning organization.

¹ The AAO notes that the record of proceeding does not contain a copy of the director's Notice of Intent to Revoke the petition's approval.

The AAO again notes that it is not clear whether the present record represents the complete record of proceeding. Both the director and counsel refer to the director's Notice of Intent to Revoke, which is not part of the current record. It is therefore, questionable, whether the current record incorporates all of the documentary evidence submitted by the petitioner, including its response to the director's notice of intent to revoke.

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). Therefore, the director must consider the untimely appeal as a motion to reconsider and render a new decision accordingly.

ORDER: The appeal is rejected. The matter is returned to the director for consideration as a motion to reconsider.