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

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER
EAC 04 250 50171

Date: JAN 24 2007

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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: The preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner is a Christian church. It seeks to employ the beneficiary permanently in the United States as a maintenance person. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition.

On July 18, 2005, the director denied the petition. The petitioner, through counsel, submitted a Notice of Appeal (I-290B) on August 19, 2005, stating only that further information from the petitioner's accountants had been solicited and requesting an additional 30 days in which to submit a brief and/or additional evidence to the AAO.

On July 10, 2006, the AAO summarily dismissed the appeal, finding that no further evidence had been provided to the record since the August 19th, 2005 appeal, despite an inquiry regarding such from the AAO. The AAO further determined that the appeal contained no specific assignment of error. *See* 8 C.F.R. § 103.3(a)(1)(v) which states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On August 17, 2006, counsel submits another I-290B, requesting an additional 60 days to submit a brief and/or evidence to the AAO. This I-290B is accompanied by counsel's transmittal letter, which states again that additional time is needed to obtain documentation from the petitioner's accountants.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

Counsel's second I-290B was received by Citizenship and Immigration Services (CIS) on August 17, 2006, or 38 days following the AAO's decision summarily dismissing the first appeal. Accordingly, the appeal from the AAO's decision is 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 that is this office. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The regulation at 8 C.F.R. § 103.5(a)(2) provides that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) provides that a motion to reconsider must offer the reasons for reconsideration and be supported by pertinent legal authority showing that the decision was based on an incorrect application of law or CIS policy. It must also demonstrate that the decision was incorrect based on the evidence contained in the record at the time of the initial decision.

Counsel's assertion that the petitioner requires additional time to obtain information from its accountants does not meet the requirements of either a motion to reopen or a motion to reconsider as it does not specify any new facts

to be considered, is not supported by affidavits, documentary evidence, or citation of legal authority why the AAO's summary dismissal was based on an incorrect application of law or CIS policy. As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.