



U.S. Citizenship
and Immigration
Services

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FILE:



EAC 05 208 54034

Offices: VERMONT SERVICE CENTER

Date: NOV 14 2007

IN RE:

Petitioner:

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)

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 Director, Vermont Service Center, initially approved the preference visa petition. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). 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) provides that the affected party, in order to properly file an appeal, must file the complete appeal within 15 days 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).

Accordingly, the appeal was untimely filed. The record indicates that the director issued the decision on July 3, 2006. The director properly gave notice to the petitioner that it had 15 days to file the appeal. Citizenship and Immigration Services (CIS) received the appeal on July 20, 2006, 48 days after the decision was issued. The appeal, therefore, was untimely filed.

Counsel¹ has not provided an explanation for the untimely appeal.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 18-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, 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 does not meet the requirements of a motion to reopen or a motion to reconsider.² Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

¹ At various times in these proceedings, counsel has stated he is practicing as the petitioner's representative, other than in his own name, as the International Professional Association and also the International Immigrants Foundation, a nonprofit legal services corporation, but he has maintained the same business address.

² Counsel had made no allegation of error of law or fact by CIS on appeal. Counsel has not submitted additional evidence but instead requests that evidence already submitted in this matter be reconsidered. Counsel submitted upon an appeal a non-precedent, redacted case by the AAO. While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. *See* 8 C.F.R. § 103.9(a). Counsel also refers to a federal court of appeal case relating to the detention and interview of an alien minor at the border for the proposition that the petitioner's bank statements already submitted in the case, in lieu of evidence required by the regulation at 8 C.F.R. § 204.5(g)(2) which are federal tax returns, should be reexamined. Counsel's logic on this issue is not evident. Since no additional evidence was submitted on appeal, the issue of the bank statements, already introduced into evidence and found in the record of proceedings, has already been considered.



As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.