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U.S. Department of Homeland Security  
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U.S. Citizenship  
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FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 07 2008

EAC-01-024-50868

IN RE:

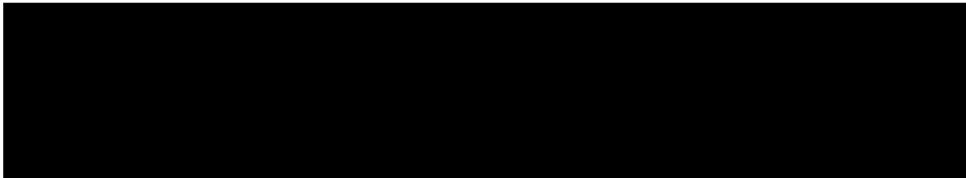
Petitioner:



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 (“director”), initially approved the immigrant visa petition. Based on information discovered during the processing of the beneficiary’s I-485 Adjustment of Status application, the director issued a Notice of Intent to Revoke (“NOIR”). The director subsequently issued a decision revoking the petition’s approval. The petitioner appealed and the matter is now before the Administrative Appeals Office (“AAO”). The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen.

In order to properly appeal a Notice of Revocation, the regulation at 8 C.F.R. § 205.2 provides that the affected party must appeal within 15 days after service of the 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 May 18, 2006. The director properly gave notice to the petitioner that it had 18 days to file the appeal. Although counsel dated the appeal June 16, 2006, the director received the appeal on June 19, 2006, or 32 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 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 meets the requirements of a motion to reconsider as it states reasons for reconsideration and counsel cites to pertinent precedent decisions. 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 reopen 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.