



U.S. Citizenship  
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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: JAN 02 2008

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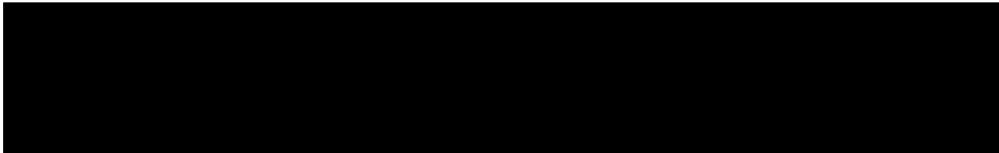
IN RE:

Petitioner:  
Beneficiary:



PETITION: 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 Acting Director, Nebraska Service Center, revoked approval of the employment-based preference visa petition that is now before the Administrating Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal of a revoked petition, the regulation at 8 C.F.R. § 205.2(d) provides that the affected party must file the complete appeal within 15 days after service of the unfavorable decision.

The record indicates that the acting director issued the decision of revocation on August 28, 2006. The acting director improperly stated that the petitioner had 30 days to file the appeal, as is the case with petitions that are denied. The acting director's misstatement, however, does not modify the period during which an appeal may be filed.

Counsel dated the appeal September 28, 2006. It was received by Citizenship and Immigration Services (CIS) on September 29, 2006, 32 days after the decision was issued. Accordingly, the appeal was 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.

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. 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 CIS law or 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 8 C.F.R. § 103.5(a)(3). A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here the untimely appeal meets the requirements of a motion to reopen because new evidence was submitted, and meets the requirements of a motion to reconsider because counsel also argues that the director's decision was an incorrect application of law. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center acting director. See 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the acting director must consider the untimely appeal as a motion to reopen and reconsider and render a new decision accordingly.

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