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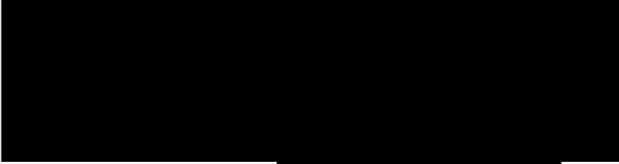
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
WAC-99-190-51005

Office: CALIFORNIA SERVICE CENTER Date **JAN 29 2008**

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

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, California Service Center (“director”), initially approved the immigrant visa petition. Following an interview of the beneficiary at the local district office, the director issued a Notice of Intent to Revoke (“NOIR”), and subsequently, a Notice of Revocation (“NOR”). 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 September 28, 2005. The director properly gave notice to the petitioner that it had 18 days to file the appeal. Although counsel dated the appeal October 10, 2005, the director received the appeal on October 21, 2005, or 23 days after the decision was issued.¹ Accordingly, the appeal was untimely filed. The director erroneously annotated the appeal as timely and forwarded the matter to the AAO.

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 reopen. 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 reopen.

¹ The record shows that the petitioner initially submitted the petition with the incorrect filing fee, and the petition was, therefore, rejected. As the appeal was initially submitted improperly without the requisite filing fee, and subsequently properly filed on October 21, 2005, the appeal was untimely filed. *See* 8 C.F.R. § 103.2(a)(7) (receipt date is assigned when filing is properly completed).