

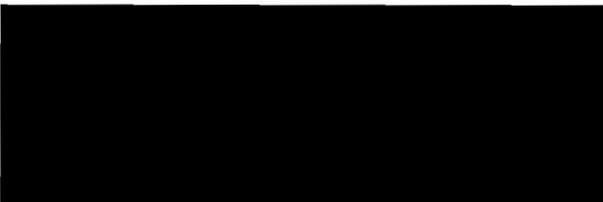


U.S. Citizenship
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Services

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File: [Redacted]
SRC-01-084-54575

Office: TEXAS SERVICE CENTER Date: **MAR 31 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 employment-based preference visa petition was initially approved by the Acting Director (Director), Texas Service Center on June 29, 2001. However, the director subsequently served the petitioner with notice of intent to revoke the approval of the petition (NOIR) on February 6, 2004. In a Notice of Revocation (NOR) dated September 2, 2005, 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.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides that “[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

The regulation at 8 C.F.R. § 205.2(d) states in pertinent part: “[t]he petitioner or self-petitioner may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation.” 8 C.F.R. § 103.5a(b) provides additional three (3) days if the decision was mailed.

The record indicates that the director issued the NOR on September 2, 2005. It is noted that the director properly gave notice to the petitioner that it had 18 days from the date of the decision to file the appeal. The Form I-290B filed by the petitioner through counsel was initially received by the Texas Service Center on September 29, 2005. However, the director returned the appeal because the version of the Form I-290B submitted was obsolete and had been replaced with a newer version. Citizenship and Immigration Services (CIS) eventually received the appeal on October 7, 2005, 35 days after the decision was issued. The appeal with the old version of the form was received 27 days after the decision was issued. Therefore, the appeal was untimely filed.

Counsel explained that the appeal was filed untimely due to the impact and damage of two hurricanes to counsel’s South Florida office. Pursuant to the instructions for Form I-290B, the AAO may grant an affected party more than 30 days to submit a brief and/or evidence to the AAO only for good cause shown. However, 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 CIS 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 because the petitioner has submitted substantial new evidence impacting 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 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.