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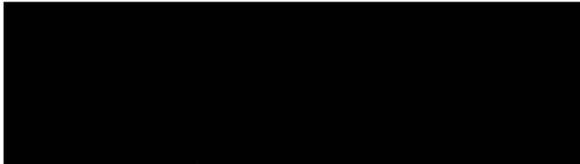
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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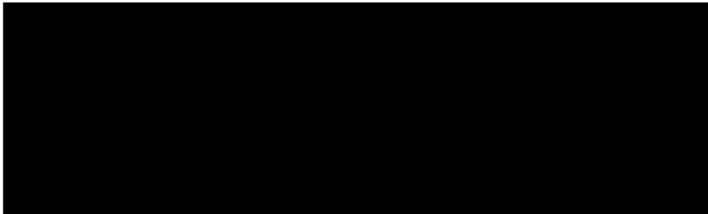
FILE: [REDACTED]
SRC-05-063-52191

Office: TEXAS SERVICE CENTER Date: **SEP 19 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, Texas Service Center (“director”), initially approved the immigrant visa petition. 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 reconsider.

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 October 17, 2005. The director properly gave notice to the petitioner that it had 15 days to file the appeal, 18 allowing for the mailed decision. Although counsel dated the appeal October 17, 2005, and the letter submitted with the appeal was dated, November 15, 2005, the director received the appeal on November 25, 2005, or 39 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 Citizenship and Immigration Services (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 reconsider as the petitioner argues that the director incorrectly revoked the petition’s approval prior to the time allotted for the petitioner’s response to the Notice of Intent to Revoke. 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 reconsider 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.

¹ The record shows that the petitioner initially submitted the appeal on November 17, 2005, which is still beyond the 18 days, but the appeal was rejected as the Form I-290 was not properly completed. The appeal was, therefore, rejected. As the appeal was initially improperly submitted, and subsequently properly filed on November 25, 2005, the appeal was untimely filed. *See* 8 C.F.R. § 103.2(a)(7) (receipt date is assigned when filing is properly completed).