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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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File: SRC 04 243 53967 Office: CALIFORNIA SERVICE CENTER Date: FEB 15 2008

IN RE: Petitioner:
Beneficiary:



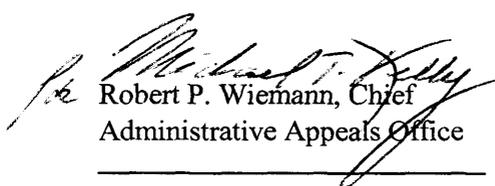
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED¹

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

¹ A person appearing before Citizenship and Immigration Services (CIS) in a representative capacity must file a Form G-28 (Notice of Appearance), signed by the petitioner, that identifies the provisions of 8 C.F.R. § 292.1 under which he or she is entitled to represent the petitioner before CIS. See 8 C.F.R. § 292.4(a). According to the Form I-290B (Notice of Appeal) and the related Form G-28, [REDACTED] filed the Form I-290B as an "agent/representative" and "not in the role of an attorney." Such information does not identify any provision of 8 C.F.R. § 292.1 under which [REDACTED] is entitled to represent the petitioner before CIS. Accordingly, the AAO is treating the petitioner as self-represented, and is not providing a copy of this decision to [REDACTED]. For future purposes, the petitioner should note that if a timely appeal is filed by a person not authorized to do so in accordance with 8 C.F.R. § 292.1, the AAO will reject that appeal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I), which states that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed, and that, in such a case, any filing fee the Service accepted will not be refunded.

DISCUSSION: The director of the California Service Center revoked the previously approved nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed; and the AAO will return the matter to the service center director for consideration as a motion to reconsider.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on February 12, 2007. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. However, Citizenship and Immigration Services (CIS) did not receive the applicant's appeal until March 22, 2007, 38 days after the decision was issued. Accordingly, the appeal was untimely filed. As discussed below, the director erred by forwarding the matter to the AAO. The relevant CIS regulations require that the director adjudicate a late appeal as a motion to reopen or reconsider if the late appeal presents matters that would merit consideration as a motion if they had been filed as a motion.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-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 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 matters presented in the untimely appeal meet the requirements for consideration as a motion to reconsider. The jurisdiction over a motion resides with 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, adjudicate it as such, and render a new decision accordingly.

ORDER: The appeal is rejected. The matter is returned to the director for treatment as a motion and for the issuance of a new decision.