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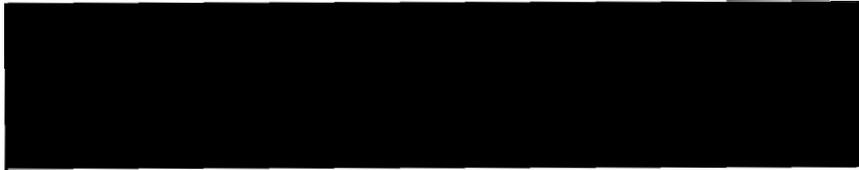
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: NOV 20 2007
SRC 02 167 51932

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 immigrant visa petition was initially approved by the by the Director, Texas Service Center. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. The director subsequently revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely. The case will be returned to the director for consideration as a motion to reconsider.

The record indicates that the Immigrant Petition for Alien Worker (I-140) was filed on May 6, 2002. It was initially approved on October 15, 2002. The director subsequently concluded that the I-140 was approved in error. On August 25, 2006, citing Section 204 (c) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1154(c), which limits the approval of other petitions in certain circumstances involving sham marriages, the director concluded that the instant I-140 was approved in error based upon the prior proceedings. The director erroneously automatically revoked the approval of the I-140 under the provisions of the regulation at 8 C.F.R. § 205.1(a)(3)(iii).¹ The director's reason for revocation is not one of the situations listed under 8 C.F.R. § 205.1(a)(3)(iii). The director should have issued a notice of intent to revoke pursuant to the regulation at 8 C.F.R. § 205.2 (b).

The regulation at 8 C.F.R. § 205.2(d) provides that a petitioner "may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation." Three additional days are provided if the notification of revocation was mailed. If the last day of the designated period falls on a Saturday, Sunday or a legal holiday, the period will run until the end of the next day, which is not a Saturday, Sunday, or legal holiday. *See* 8 C.F.R. § 1.1(h). 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).

Although the director's decision to revoke the petition's approval failed to adhere to the procedure for revocation upon notice set forth at 8 C. F. R. § 205.2 and thus failed to advise the petitioner that it had 18 days to file the appeal, it remains the petitioner's burden to file a timely appeal. An untimely appeal shall be rejected as improperly filed. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 18-day time limit for filing an appeal. The 18-day deadline for filing an appeal from the director's decision of August 25, 2006 to revoke the petition's approval fell on Tuesday, September 12, 2006. Here, the director received the appeal on Monday, September 25, 2006. As the appeal was untimely filed, it 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.

¹ Under the provisions of this regulation, a petition may be automatically revoked upon invalidation pursuant to 20 CFR Part 656 of the labor certification in support of the petition; upon the death of the petitioner or beneficiary; upon written notice of withdrawal filed by the petitioner, in employment-based preference cases with any officer of the Service who is authorized to grant or deny petitions; and upon termination of the employer's business in an employment-based preference case under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act.

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 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).

Based on the facts described above, the director is advised that if she elects to revoke the petition's approval, she must first issue a notice of intent to revoke pursuant to 8 C.F.R. § 205.2(b). Here, the untimely appeal also meets the requirements of a motion to reconsider. Therefore, she should treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2) and consider it in conjunction with any arguments made in opposition to a revocation.

Accordingly, the petitioner's appeal is rejected as untimely filed. The case will be returned to the director to treat the untimely appeal as a motion to reconsider and to proceed accordingly.

ORDER: The untimely appeal is rejected. The matter is returned to the director for consideration of the appeal as a motion to reconsider and for further proceedings consistent with this opinion.