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

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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 30 2007

SRC 00 141 52957

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

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.

Laura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. After various intervening motions, the matter is now before the Administrative Appeals Office (AAO) on appeal. 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 file an appeal of a revocation, the regulation at 8 C.F.R. 205.2(d) requires the affected party to file the complete appeal within 15 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 18 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 latest decision on March 8, 2007. In that decision, the director did not advise the petitioner of its appeal rights, or of the 15-day deadline for filing an appeal. Counsel dated the appeal April 7, 2007, but the submission included a cover letter dated April 9, 2007 and a Form G-28, Notice of Entry of Appearance as Attorney or Representative dated April 10, 2007. The director received the appeal on April 16, 2007, 39 days after the decision was issued. 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 contains new evidence and therefore appears to meet 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.

We note that the petitioner has consistently claimed not to have received the director's notice of intent to revoke. In the interest of clarity, we shall briefly address that issue here.

The Form I-360 petition provided a street address for the petitioning church, and the initial documents identified [redacted] as the president and pastor of that church. [redacted] is the individual

who signed the Form I-360. The initial filing of the petition also included a Form G-28, dated March 20, 2000, on which [redacted] identified himself as a "Representative" and stated his address as [redacted] Miami, Florida, 33283.

Subsequently, the petitioner submitted a second Form G-28, dated June 30, 2000. On this second form, [redacted] checked a box labeled "I am an attorney and a member in good standing of the bar of . . . the highest court of the following State." The form includes blank spaces for the name of the state and the name of the court. [redacted] filled in these blanks with, respectively, "FLORIDA" and "SUPREME COURT." On this form, under "Complete Address," [redacted] used the same address [redacted] Miami, Florida, 33283, this time calling it the address of [redacted] It is clear that [redacted] did not inadvertently or accidentally refer to himself as an attorney. [redacted] specifically asserted that he was an attorney and a member of the Florida bar, with a practice called [redacted]

On October 11, 2006, the director issued a notice of intent to revoke (based, in part, on the lack of evidence to verify that [redacted] was, as claimed, an attorney in good standing with the Florida Supreme Court). The director addressed the notice to [redacted] Miami, Florida, 33283. The record does not show that this notice was returned as undeliverable. There is no evidence that the petitioner informed the director of a change of address before October 11, 2006, and therefore the director addressed the notice to what was, at the time, the address that [redacted] had most recently provided to the director.

On December 13, 2006, the director issued the notice of revocation, based on the petitioner's failure to respond to the notice of intent to revoke. The director also addressed this notice to [redacted], Miami, Florida, 33283 (and to a second post office box number, provided by [redacted] in November 2006). Again, there is no indication that this notice was returned as undeliverable.

On appeal, counsel claims that the petitioner never received the notice of intent to revoke, and states: "It is evident that it was sent to a wrong address." Counsel asks that the relevant notices be re-sent "to the correct address," the "correct address" being [redacted] Miami, Florida, 33283. As noted above, the appeal includes a new Form G-28, dated April 10, 2007. This form likewise lists the petitioner's mailing address as [redacted] Miami, Florida, 33283. The petitioner and counsel have the right to request a copy of the notice of intent to revoke, but the available evidence deals a serious blow to the claim that the director did not properly serve that notice in October 2006. Given the petitioner's continued use of [redacted] it is difficult if not outright impossible to assert that the director erred by mailing the notice of intent to revoke to [redacted]

ORDER: The appeal is rejected. The matter is returned to the director for consideration as a motion to reopen.