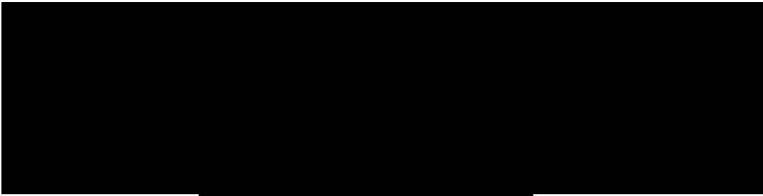




U.S. Citizenship
and Immigration
Services

B4



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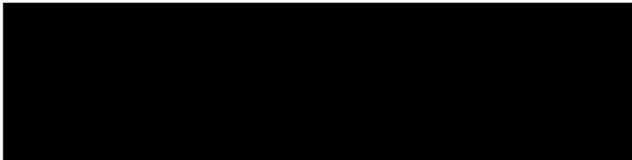
Office: CALIFORNIA SERVICE CENTER

Date: DEC 04 2009

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

IN 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, revoked approval of the nonimmigrant visa petition. The matter is currently before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

Pursuant to the regulation at 8 C.F.R. § 205.2(d), in order to properly file an appeal from a decision revoking approval of a petition it must be filed within 15 days after the service of the notice of the revocation with an additional three days given to petitioners served with the notice by mail. *See* 8 C.F.R. § 103.5a(b). Service is considered complete upon the mailing of the notice of revocation. *See id.*

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a U.S. Citizenship and Immigration Services (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on June 1, 2006. The director properly informed the petitioner that it had 18 days from the date the notice was issued to file a timely appeal. With regard to the date of service of the revocation notice, counsel argues that the appeal should be deemed timely so long as it is received by USCIS within 18 days of the date the petitioner receives the adverse notice. However, as indicated above, the regulation at 8 C.F.R. § 103.5a(b) clearly states that service is considered complete upon the mailing of the notice. Moreover, counsel admits that his office received the notice of revocation on June 14, 2006. Thus, the petitioner had adequate time in which to timely file a Form I-290B, permitting the petitioner an opportunity to submit an appellate brief within 30 days of filing the actual form.

In the present matter, the petitioner filed an appeal, which was received by USCIS on Tuesday, June 20, 2006, or 19 days after the decision was issued. Therefore, the appeal was untimely filed. Although the AAO acknowledges the petitioner's notice in which the petitioner informed USCIS of its change of address as of January 1, 2006, the petitioner dated that notice June 15, 2006, thus indicating that the change of address had not been submitted to USCIS prior to the date the notice of revocation was issued.¹ In summary, the petitioner failed to file a timely appeal disputing the director's revocation of the Form I-140 approval in the present matter. There is no law or regulation that grants the director the authority to extend this deadline or the AAO the discretionary authority to overlook the prescribed time constraint.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) states that an appeal which is not filed within the time allowed must be rejected as improperly filed. However, 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 Counsel further claims that "he," apparently referring to the beneficiary, received his I-485 denial notice but never received the director's decision to revoke the petitioner's immigrant petition. It is noted, however, that the petitioner, as a separate legal entity and as the affected party, should not be confused with the beneficiary. Therefore, whether the beneficiary, as an unaffected party in these proceedings, received a copy of the revocation notice for the petitioner's immigrant petition is irrelevant.

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, although the petitioner cites a precedent decision, the cited decision merely reiterates the USCIS burden or proof when revoking a prior approval. Counsel makes no argument nor cites relevant precedent case law establishing that USCIS failed to meet its burden. Thus, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected as untimely filed.