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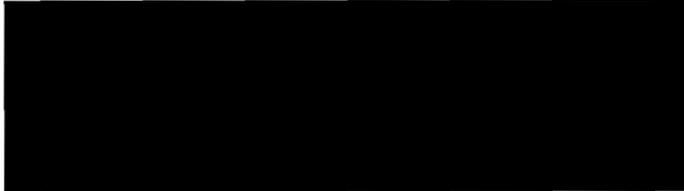
Office: NEBRASKA SERVICE CENTER

Date: DEC 03 2007

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 Director, Nebraska Service Center. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. The director served the petitioner with notice of intent to revoke the approval of the preference visa petition. 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. The case will be returned to the director to treat it as a motion to reopen.

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).

The record indicates that the Immigrant Petition for Alien Worker (I-140) was initially approved on January 16, 2001. The director subsequently concluded that the I-140 was approved in error and notified the petitioner of his intent to revoke the petition on July 20, 2005. The director determined that the petitioner’s response did not overcome the grounds for revocation and the petition’s approval was revoked on September 22, 2005, pursuant to section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155.

It is noted that the director’s decision to revoke the petition’s approval failed to properly give notice to the petitioner that it had 15 days (18 days if revocation notification was mailed) to file the appeal. The director erroneously advised the petitioner that it had 30 days to appeal (33 days if the revocation notification was received by mail). However, 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 to revoke the petition’s approval fell on Tuesday, October 11, 2005. Here, the director received the appeal on Monday, October 17, 2005. 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 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 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 should treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

Accordingly, the petitioner's appeal is rejected as untimely filed. The matter will be returned to the director to treat as a motion to reopen.

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