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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 0 5 2010

IN RE: Petitioner: Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The approval of the employment-based immigrant visa petition was revoked by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed; however, the matter will be remanded as a motion to reopen and reconsider.

The petitioner seeks to permanently employ the beneficiary as a cashier. The petitioner requests classification of the beneficiary as an unskilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).[1] The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is July 24, 2002, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

On April 28, 2008, the director revoked the approval of the petition.[2] The reason for the revocation is that the beneficiary had previously entered into a fraudulent marriage in order to obtain lawful permanent residence. Counsel's appeal was received by U.S. Citizenship and Immigration Services (USCIS) on May 23, 2008, 25 days after the decision was issued. An appeal of a revocation must be filed within 15 days after service of the decision. *See* 8 C.F.R. § 205.2(d). 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 by USCIS. *See* 8 C.F.R. § 103.2(a)(7)(i).

It is noted that the director's notice of revocation (NOR) did not state the number of days that the petitioner had to file an appeal. 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, it must be rejected. The fact that the NOR did not state the period to file the appeal does not forgive the late filing. The regulation at 8 C.F.R. § 205.2(d) is sufficient notice to the petitioner of the allotted time to appeal a revocation.

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 USCIS policy. 8 C.F.R. § 103.5(a)(3). In addition, a motion to reconsider must establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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[1] Section 203(b)(3)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii), grants preference classification to other qualified immigrants who are capable of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

[2] Section 205 of the Act permits the director to revoke the approval of a petition "at any time, for what he deems to be good and sufficient cause."

The evidence and arguments in the record meet the requirements of a motion to reopen and reconsider. The case will therefore be remanded to the director for further consideration. This decision does not address whether or not the evidence in the record is sufficient to overcome the grounds of the NOR.

ORDER: The appeal is rejected. The petition is remanded to the director as a motion to reopen and reconsider for further action in accordance with the foregoing and entry of a new decision.