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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

B6

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER

Date:
OCT 29 2010

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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Henry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The immigrant visa petition was initially approved by the Director of the Vermont Service Center on February 23, 2002. The Director of the Texas Service Center (TSC), however, revoked the approval of the immigrant petition on May 23, 2009. 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 reconsider.

In order to properly file an appeal the decision to revoke the approval, the regulation at 8 C.F.R. § 205.2(d) provides that the petitioner or self-petitioner may appeal within 15 days after the service of notice of the revocation (18 days if the notice of revocation was mailed to the petitioner). 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).

Here, the record indicates that the [REDACTED] director issued the notice of revocation on May 23, 2009, notifying the petitioner that it had 15 days to appeal the matter to the AAO (18 days if the notice of revocation was mailed). Although counsel sent the appeal within the 18-day time frame as prescribed by the regulation at 8 C.F.R. § 205.2(d),¹ the appeal was received by the director on June 11, 2009, 19 days after the notice of revocation 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 Immigration and Nationality Act (the Act) nor the pertinent regulations grant the AAO authority to extend the 15-day (or 18-day) 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 United States Citizenship and Immigration Services (USCIS) 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 reconsider because counsel has reasonably articulated and asserted several reasons why the revocation is erroneous. In addition, counsel has submitted pertinent precedent decisions supporting his assertions. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in

¹ The petitioner sent the appeal on June 9, 2009, 17 days after the notice of revocation was issued.

this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the [REDACTED] director must consider the untimely appeal as a motion to reconsider and render a new decision accordingly.

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