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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

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FILE:

EAC 05 163 52614

Office: VERMONT SERVICE CENTER

Date: APR 27 2009

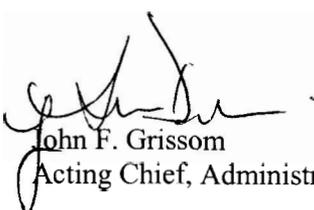
IN RE:

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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.


John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director revoked approval of the immigrant visa petition and, in response to a motion to reopen or reconsider the matter, affirmed his revocation. 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 service center for consideration as a motion to reopen.

The director affirmed his revocation on June 12, 2007. The director notified the petitioner that, pursuant to 8 C.F.R. § 103.3(a)(2)(i), she had 30 days in which to file an appeal after service of the unfavorable decision, and 33 days in which to file an appeal in the event the decision was mailed. *See* 8 C.F.R. § 103.5a(b). However, because the underlying decision that the petitioner seeks to reverse was a revocation, and not a denial, the regulation at 8 C.F.R. § 205.2(d) governs this proceeding. In order to properly appeal a decision to revoke approval of a petition, the regulation at 8 C.F.R. § 205.2(d) provides that the affected party must file the appeal within 15 days after service of the notice of revocation.

U.S. Citizenship and Immigration Services did not receive the petitioner's appeal until July 13, 2007, 31 days after the decision was issued. Accordingly, the appeal was untimely filed. While the AAO acknowledges that the petitioner was incorrectly advised that it had 33 days in which to submit an appeal (since the decision was mailed), neither the Act nor the pertinent regulations grant the AAO authority to extend the 15-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 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 meets the requirements of a motion to reopen. The record now contains the following evidence that was not before the director at the time he issued his decision:

- A June 29, 2007 letter from [redacted] director of the Marriage Registration Office of the Civil Service Department in the Shibe District of Qingdao. [redacted] states that "[w]ith regard to the marriage status between [the petitioner and her husband], I hereby make further explanations on behalf of the Chinese party and expect that the parties concerned in the United States [will] offer cooperation." [redacted] states that he has personally checked the petitioner's original marriage record, and that the couple in fact registered for marriage at his

office on August 20, 1988. He also states that he personally issued the June 23, 2006 marriage certificate.

- A June 29, 2007 “Record Checking Certificate” issued by _____ in which he states that the petitioner and her husband were registered for marriage at his office on August 20, 1988.
- A July 12, 2007 letter from the Vice Consul of the Consulate General of the People’s Republic of China in San Francisco. The Vice Consul states that the marriage certificate submitted by the petitioner in support of the Form I-360 was in fact issued by the Qingdao Notary Public Office.

As this additional evidence was not before the director at the time he issued his decision, 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 director of the service center. *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.

ORDER: The appeal is rejected. The matter is returned to the director for consideration as a motion to reopen and the issuance of a new decision.