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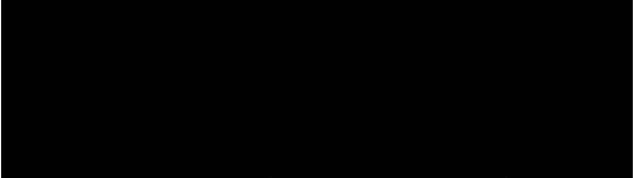
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 03 145 51977

Office: VERMONT SERVICE CENTER

Date:

APR 28 2009

IN RE:

Petitioner:



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

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 Director, Vermont Service Center, approved the immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director revoked approval of the petition upon notice and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the case will be returned to the director for further action.

The regulation requires that an appeal from the revocation of the approval of a petition must be filed within 15 days after the service of the notice of revocation. 8 C.F.R. § 205.2(d). If the notice was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b).

The record in this case shows that the director issued the revocation decision on August 14, 2007. U.S. Citizenship and Immigration Services (USCIS) received the petitioner's Form I-290B, Notice of Appeal, on September 5, 2007, which was 22 days after the director's decision was issued. Because the eighteenth day after the director's decision was Saturday, September 1, 2007 and Monday, September 3, 2007 was a federal holiday, the last day the appeal could have been timely filed was Tuesday, September 4, 2007. The appeal was not received until the following day, September 5, 2007. Because the appeal was untimely filed, it must be rejected.

Nonetheless, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) directs 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. 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).

The petitioner's untimely appeal meets the requirements of a motion to reconsider and a motion to reopen. Counsel claims that the director erroneously determined that the petitioner did not have a qualifying relationship and was not a person of good moral character in contravention of the applicable law and USCIS policy. Counsel also submits new evidence. Accordingly, the petition will be returned to the director to treat the untimely appeal as a motion to reopen and reconsider.

ORDER: The appeal is rejected and returned to the director for treatment as a motion to reopen and reconsider.