

identifying data of [redacted]
prevent clearly [redacted]
invasion of personal [redacted]

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

[redacted]

B9

DATE: **DEC 02 2011** OFFICE: VERMONT SERVICE CENTER

FILE: [redacted]

IN RE: [redacted]

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:

[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 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director (the director) revoked approval of the immigrant visa petition after properly notifying the petitioner and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The regulation requires that an appeal from the revocation 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 May 10, 2011. The director improperly stated that any appeal had to be filed within 33 days of the revocation decision. The director's error does not, however, extend the regulatory requirement that the appeal of a revocation decision issued by mail must be filed within 18 days. U.S. Citizenship and Immigration Services (USCIS) received the petitioner's Notice of Appeal on June 9, 2011, which was 30 days after the director's decision was issued. The appeal was thus untimely filed.

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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The matter will therefore be returned to the director. If the director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

The appeal was untimely filed and must be rejected.

ORDER: The appeal is rejected.