

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



D2

FILE: WAC 03 104 53635 Office: CALIFORNIA SERVICE CENTER Date: JUN 29 2009

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

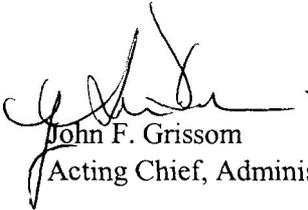
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the service center director. Based upon information obtained from the beneficiary during her visa issuance process at the U.S. Consulate in Ho Chi Minh City, Vietnam, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the visa petition and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued the decision on December 6, 2007. It is noted that the instructions on the Form I-290B (Notice of Appeal) gave notice to the petitioner that it had 33 days to file the appeal. The appeal was received with the proper fee by U.S. Citizenship and Immigration Services (USCIS) on January 14, 2008, or 39 days after the decision was issued. Accordingly, the appeal was 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.

An untimely filed appeal must meet specific requirements to be treated as a motion. The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Furthermore, 8 C.F.R. § 103.5(a)(3) requires that 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.

Review of the record indicates that the appeal does not meet either of these requirements.

The director revoked the petition determining that the petitioner had not demonstrated that the beneficiary is qualified to perform the services of a specialty occupation.

On appeal, the petitioner's CEO asserts that the U.S. Consulate misinterpreted a Vietnamese word, erroneously translating its meaning as "clerk." The petitioner's CEO submits copies of previously submitted documents. The petitioner's CEO does not state new facts, supported by affidavits or other documentary evidence. Furthermore, the petitioner neither states a clear reason for reconsideration nor provides any precedent decision to establish that the decision was based on an incorrect application of law or CIS policy. For these reasons, the director appropriately declined to treat the appeal as a motion to reopen or reconsider.

WAC 03 104 53635

Page 3

As the appeal was untimely filed and the petitioner has failed to provide any new facts or evidence that support a motion to reopen, the appeal must be rejected.

ORDER: The appeal is rejected as untimely filed.