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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: FRESNO, CA

Date:

DEC 17 2008

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Field Office Director (FOD), Fresno, California, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Lebanon, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the nonimmigrant visa petition On September 24, 2007 because, on July 22, 2005, the petitioner wrote a letter to the National Visa Center (NVC) asking the NVC to withdraw the I-130 Petition for Alien Relative that he had filed on the beneficiary's behalf because he was dissolving his marriage.

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). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a U.S. Citizenship and Immigration Services (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on September 24, 2007. According to the date stamp on the Form I-290B Notice of Appeal, it was received by USCIS on November 14, 2007, or 51 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 the requirements of a motion. The regulation at 8 C.F.R. § 214.2(k)(7) states that, “[t]o be classified as a K-3 spouse . . . the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen . . .” Service records indicate that, on July 22, 2005, the petitioner withdrew the Form I-130, Petition for Alien Relative, that he filed on behalf of the beneficiary. The regulation states at 8 C.F.R. § 103.2(b)(6) that, “a withdrawal may not be retracted.” As the petitioner's spouse was not the beneficiary of an

immigrant visa petition when the Form I-129F Petition was filed, the beneficiary is, therefore, ineligible for the classification sought.

ORDER: The appeal is rejected as untimely filed. The petition is denied.