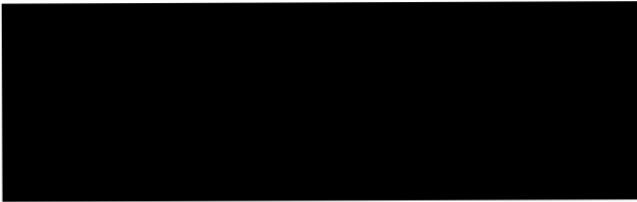


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U.S. Citizenship
and Immigration
Services

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File: [redacted]
SRC 05 050 52107

Office: TEXAS SERVICE CENTER

Date: OCT 04 2006

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

IN 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, Texas Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with a notice of her intention to revoke the approval of the preference visa petition, and her reasons therefore. The director 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.

Pursuant to 8 C.F.R. § 205.2(d), an appeal disputing the revocation of an approved visa petition must be filed within 15 days of the Citizenship and Immigration Services' (CIS) adverse decision, 18 days if mailed. 8 C.F.R. § 103.5a(b). Service by mail is complete upon mailing. *Id.*

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS 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 revoking approval of the petition on February 8, 2006. It is noted that the director properly gave notice to the petitioner that it had 15 days to file the appeal. The appeal was received on March 10, 2006, or 30 days after the decision was issued. Although counsel asserts that he did not receive the notice of revocation until after the passage of the 15-day period, the record clearly shows that a copy of the director's decision was sent out to counsel's address of record. Counsel has not submitted any documentation to show that the decision was not sent in a timely fashion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel further claims that he never received the director's Notice of Intent to Revoke (NOIR), suggesting that CIS failed to comply with 8 C.F.R. § 205.2(c), which requires that the director issue a notice of intent to revoke prior to issuing a final notice of revocation. However, neither service records nor any submissions by counsel support counsel's claim. To the contrary, service records indicate that a NOIR was sent to counsel on January 4, 2006.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) states that an appeal which is not filed within the time allowed must be rejected as improperly filed. Accordingly, the appeal in the instant matter will be rejected.

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 service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

ORDER: The appeal is rejected as untimely filed.