

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

(b)(6)



DATE **APR 25 2012** OFFICE: NEBRASKA SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents related to this matter have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (the director), revoked the approval of the immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen and reconsider.

In order to file an appeal properly, the regulation at 8 C.F.R. § 205.2(d) provides that the petitioner or self-petitioner may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation. If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of submission, but the date of actual receipt with the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i).

The director issued the decision on March 3, 2009. The director properly gave notice to the petitioner that it had 18 days to file the appeal. Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The Form I-290B, Notice of Appeal or Motion, was received by the service center on March 31, 2009 or 25 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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the director, Texas Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

As the brief in this matter was submitted directly to the AAO in accordance with 8 C.F.R. § 103.3(a)(2)(viii), the director did not have an opportunity to review the late appeal to determine whether it meets the requirements of a motion to reopen or a motion to reconsider. Therefore, the matter will 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.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.