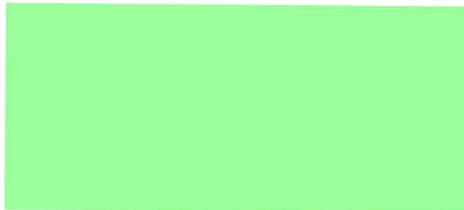




U.S. Citizenship
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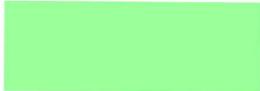
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DATE:

OFFICE: NEBRASKA SERVICE CENTER

FILE:

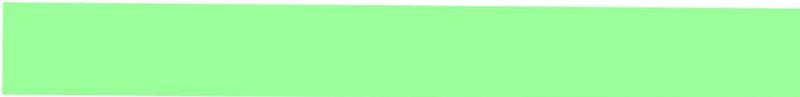


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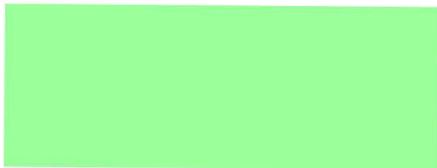
Petitioner:

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:

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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, revoked the approval of the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). 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.

The petitioner must appeal a decision to revoke the approval of a petition within 15 days of service. 8 C.F.R. § 205.2(d). If the unfavorable decision was mailed, the appeal must be filed within 18 days. 8 C.F.R. § 103.8(b). An untimely appeal must be rejected as improperly filed. Neither the Act nor the regulations grant the AAO authority to extend this time limit.

The filing date is the actual date of receipt at the location designated for filing. 8 C.F.R. § 103.2(a)(7)(i). The appeal must be signed and submitted with the correct fee. *Id.*

The director issued the decision revoking the petition on May 7, 2009. The director gave notice to the petitioner that it had 18 days to file the appeal. The petitioner filed the Form I-290B, Notice of Appeal or Motion, on August 24, 2011, over two years after the decision was issued. Accordingly, the appeal is untimely.

If an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director, Nebraska Service Center. 8 C.F.R. § 103.5(a)(1)(ii).

As the appeal brief and additional evidence in this matter were 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 untimely appeal to determine whether it meets the requirements of a motion to reopen or reconsider. Therefore, the matter will be returned to the director. If the director determines that the untimely appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued. If the director determines that the untimely appeal does not meet the requirements of a motion, no new decision will be issued.

The following should be noted, however. Counsel states that the petitioner first received notice of revocation of the petition's approval in 2011 when the beneficiary's Form I-485 and family's Form I-485s were denied (I-485 denied July 22, 2011; the present appeal was filed August 24, 2011). Upon investigation, counsel asserts that USCIS had mailed the Notice of Intent to Revoke (NOIR) and the Notice of Revocation (NOR) to prior counsel's former address, with the NOIR having been mailed on January 28, 2009 and the NOR having been mailed on May 7, 2009. These mailings were sent to a former address of the petitioner's then counsel after that counsel had notified USCIS of her new address with the submission of a Form G-28 dated July 1, 2007 in a companion proceeding with the same A-Number as the present case. Thus, it would appear based on the facts that this proceeding would be ripe for reopening to consider the reissuance of the NOIR allowing the petitioner and counsel adequate time to respond if reopened.

(b)(6)

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The untimely appeal must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).¹

ORDER: The appeal is rejected.

¹ Neither the Act nor the regulations grant the AAO authority to extend this time limit