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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

B2



DATE

MAR 30 2012

Office: TEXAS SERVICE CENTER

FILE



IN RE:

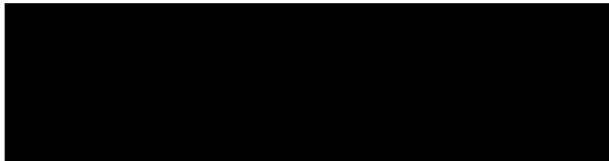
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the preference visa petition on January 11, 2010. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR) dated November 1, 2011, the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The petition 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 on a notice of revocation, the regulation at 8 C.F.R. § 205.2(d) provides that the petitioner or the attorney or representative of record must file the complete appeal within 15 days of service of the unfavorable decision. 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 mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the service center director issued the decision on November 1, 2011. It is noted that the service center director properly gave notice to the petitioner that it had 18 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

Although counsel dated the Form I-290B November 14, 2011, it was not received by the service center until Tuesday, November 22, 2011, or 21 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 of the Texas Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO. As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.