

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

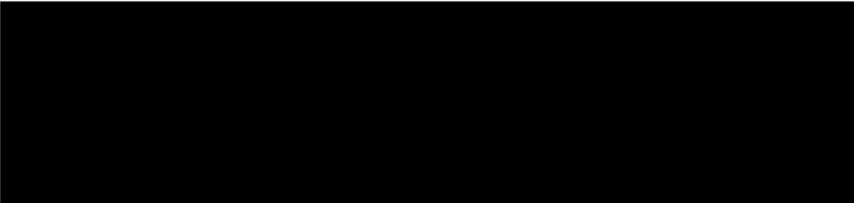
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

34



File:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 03 20

WAC 96 010 50410

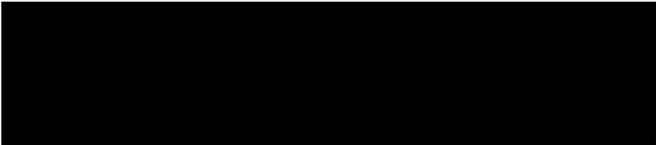
IN RE:

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 immigrant petition was initially granted. However, upon further review, the Director, California Service Center, determined that the petitioner may be ineligible for the immigration benefit sought and issued a Notice of Intent to Revoke (NOIR) the approval. The approval was subsequently revoked in a separate decision issued by the director.¹ The matter is presently before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly filed.

In order to properly file an appeal of a decision revoking a prior approval, 8 C.F.R. § 205.2(d) provides that the affected party must file the appeal within 15 days of service of the notice of revocation.

The record indicates that the director issued the decision on November 23, 2005. The director sent the decision to both the petitioner and to the petitioner's counsel of record at their last known addresses of record. The record also shows that the petitioner's Form I-290B appeal was received at the designated service center on Thursday, December 22, 2005, or 29 days after the decision was issued. The director properly gave notice to the petitioner that it had 15 days to file the appeal (18 days if the notice was mailed). 8 C.F.R. § 205.2(d); 8 C.F.R. § 103.5a(b).

The AAO does not have the discretionary authority to consider an appeal that has not been timely filed. Neither the Act nor the pertinent regulations grant the AAO authority to extend the 15-day time limit for filing an appeal of a revoked immigrant petition. *See Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006). As the petitioner in the instant matter failed to comply with the time restriction specifically cited in 8 C.F.R. § 205.2(d), the appeal cannot be deemed timely filed.

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 case 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 as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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).

In this matter, it is noted that the appeal does not meet the applicable requirements of a motion to reopen or reconsider. 8 C.F.R. § 103.5(a). This regulation states in pertinent part that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." *Id.* Furthermore, "[a] motion to reconsider must state the reasons for reconsideration and be

¹ It should be noted that, according to California state corporate records, the petitioner's corporate status in California is "suspended." Therefore, as the petitioner has lost all rights and powers for failure to meet statutory filing requirements, the company can no longer be considered a legal entity in the United States. As such, even if the appeal had been properly filed and the issues raised on appeal were overcome, given the petitioner's current corporate status in the United States, it appears the petition could not have been approved for this additional reason alone and, in fact, renders it subject to automatic revocation without prior notice. *See* 8 C.F.R. § 205.1(a)(3)(iii)(D).

supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services (CIS)] policy." *Id.*

First, the record indicates that counsel to the petitioner submitted his brief to the California Service Center on or about January 19, 2006, 28 days after the Form I-290B was filed. However, the regulations at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to Form I-290B require the affected party to submit the brief or evidence directly to the AAO, not to the Service Center. Because the affected party did not follow the regulations or the instructions, the brief was not properly filed and, therefore, it may not be used as a basis in granting a motion to reopen or reconsider the late appeal.

Second, even if the brief and attachments submitted to USCIS on January 19, 2008 had been properly submitted to the AAO, the petitioner offers no "new" evidence, which could not have been presented in the initial proceeding. Likewise, counsel fails to cite to any pertinent precedent decisions establishing that the director's decision was an incorrect application of law or CIS policy.

Accordingly, the appeal is rejected and does not meet the requirements of a motion.

ORDER: The appeal is rejected as improperly filed.