

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

B4

File: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: FEB 15 2011

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, revoked approval of the immigrant visa petition. The matter is currently before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The case will be remanded to the Nebraska Service Center to be treated as a motion.

The petitioner is a California corporation that seeks to employ the beneficiary as its operations manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

In a decision dated July 24, 2009, the director revoked approval of the petition concluding that the petitioner failed to respond to the June 9, 2009 notice of intent to revoke (NOIR), which was based on the finding that the petitioner failed to establish that the beneficiary is employed in the United States in a qualifying managerial or executive capacity. The petitioner filed an appeal disputing the director's findings both with regard to the timely filing of the response to the NOIR and the beneficiary's qualifying employment with the U.S. entity.

Pursuant to the regulation at 8 C.F.R. § 205.2(d), in order to properly file an appeal from a decision revoking approval of a petition, the appeal must be filed within 15 days after the service of the notice of the revocation. In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a U.S. Citizenship and Immigration Services (USCIS) 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 on July 24, 2009. The appeal was received by USCIS on August 19, 2009, or 26 days after the decision was issued. Therefore, the appeal was untimely filed. Although the director erroneously instructed the petitioner that it had thirty days in which to file the appeal, the AAO cannot circumvent or overlook the time limits specified at 8 C.F.R. § 205.2(d), which clearly state that the petitioner has only 15 days in which to file an appeal from a revocation. As the appeal in the present matter was untimely filed, it must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Notwithstanding the rejection of the instant appeal, regulations at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) determined that USCIS must treat certain untimely appeals as motions pursuant to the following guidelines:

If an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) of this part or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

Accordingly, this case will be remanded to the Nebraska Service Center for the purpose of considering all the evidence of record, including the evidence submitted in support of the appeal in which the petitioner addressed the issues raised by the director in the final notice.

ORDER: The appeal is hereby rejected. The case is remanded to the director for further consideration.