

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

[REDACTED]

B5

DATE: DEC 17 2012

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:
Beneficiary:

[REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON 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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Texas Service Center (Director). The approval of the petition was subsequently revoked by the Director. The revocation decision is now on appeal before the Acting Chief, Administrative Appeals Office (AAO). The appeal will be rejected as untimely filed.

The petitioner is a computer consulting company. It seeks to permanently employ the beneficiary in the United States as a computer software engineer and to classify him as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The petition was filed on July 25, 2007, and approved on August 20, 2008. On February 8, 2012, however, the Director issued a Notice of Intent to Revoke (NOIR) the approval on two grounds: (1) the beneficiary did not have the requisite education for the requested classification, and (2) the record did not properly demonstrate the petitioner's ability to pay the proffered wage. The Director listed the documentation needed from the petitioner to address these two issues, and advised that the petitioner had 33 days to respond to the NOIR with the requested evidence. Thus, the petitioner's response was due by March 12, 2012.

No response was received from the petitioner. On April 4, 2012, therefore, the Director issued a Notice of Revocation of Immigrant Petition. The Director advised that the petitioner could file an appeal with the AAO, or a motion to reopen or reconsider with the Service Center, within 18 days. Since April 22, 2012 was a Sunday, the deadline for an appeal or motion from the petitioner was Monday, April 23, 2012. No appeal or motion was filed within the requisite time period.

On August 22, 2012 – four months after the deadline for an appeal or motion – counsel filed a Form I-290B, Notice of Appeal or Motion, asserting that the petitioner had not received the revocation decision and NOIR until August 13, 2012. The Form I-290B, which counsel identified as an appeal, was accompanied by a brief and documentary evidence responding to the NOIR.

An untimely appeal must be rejected as improperly filed. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

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 case will therefore 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, it must be rejected by the AAO.

ORDER: The appeal is rejected.