

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



B5-

DATE: **MAY 17 2012** OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

PETITION: Immigrant Petition for Alien Worker 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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents related to this matter have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The approval of the employment-based immigrant visa petition was revoked by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. 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.

On March 23, 2010, the director revoked the approval of the petition.<sup>1</sup> The reason for the revocation is that the signatures appearing on the Form I-140, ETA Form 9089, and G-28 were not in compliance with applicable regulations. Counsel's appeal was received by U.S. Citizenship and Immigration Services (USCIS) on April 22, 2010, 30 days after the decision was issued. An appeal of a revocation must be filed within 15 days after service of the decision. *See* 8 C.F.R. § 205.2(d). If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt by USCIS. *See* 8 C.F.R. § 103.2(a)(7)(i).

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing an appeal. As the appeal was untimely filed, it must be rejected. The regulation at 8 C.F.R. § 205.2(d) is sufficient notice to the petitioner of the allotted time to appeal a revocation.

Nevertheless, 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. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). In addition, a motion to reconsider must establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). 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. *See* 8 C.F.R. § 103.5(a)(1)(ii).

Therefore, the matter will 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, the appeal must be rejected.

**ORDER:** The appeal is rejected.

---

<sup>1</sup> Section 205 of the Act permits the director to revoke the approval of a petition "at any time, for what he deems to be good and sufficient cause."