

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

B6

PUBLIC COPY



FILE: [REDACTED]
EAC 00 170 51733

Office: VERMONT SERVICE CENTER

Date: MAY 01 2007

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

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to
Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON 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 employment based immigrant visa petition was initially approved by the Director, Texas Service Center. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. The director subsequently revoked approval of the petition. The petitioner's appeal was rejected by the Administrative Appeals Office (AAO) as untimely. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be granted. The rejection of the appeal is withdrawn and the untimely appeal will be remanded to the director for further consideration as a motion to reopen or reconsider.

The petitioner's Immigrant Petition for Alien Worker (I-140) was initially approved on November 2, 2000. Upon further review, the director subsequently revoked the approval of the petition on January 29, 2002. The director's decision correctly advised the petitioner of the 15 day (18 days if mailed) deadline to appeal the revocation of an I-140.¹ The enclosed notice of appeal, Form I-290B, however, advised the petitioner that the appeal would be rejected if not filed on or before March 8, 2002. Citizenship and Immigration Services (CIS) received the appeal on March 1, 2002. It was forwarded to the AAO and rejected on August 3, 2004, as untimely filed. The petitioner, through counsel, filed a motion to reopen/reconsider based on fundamental fairness and the regulatory provision providing that if the untimely appeal meets the requirements of a motion to reopen or reconsider it shall be treated as a motion and a decision must be made on the merits. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

In that this case is based on a revocation of the I-140 and based on a review of the contradictory information provided to the petitioner regarding the deadline for the appeal; in the interests of fairness, the AAO withdraws its previous rejection and will remand the untimely appeal to the director under 8 C.F.R. § 103.5(a)(1)(ii) in order to articulate a finding as to whether it qualifies as a motion to reopen or reconsider and whether it overcomes the director's decision to revoke the petition's approval.

The burden of proof in these proceedings remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

Order: The AAO's decision of August 3, 2004, is withdrawn. The case will be returned to the director to make a specific finding as to whether the untimely appeal qualifies as a motion to reopen or reconsider and whether it overcomes the decision to revoke the petition's approval. If adverse to the petitioner, the decision shall be certified to the AAO for review.

¹ If mailed, the appeal would have to be filed by February 19, 2002.