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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
WAC 00 208 52078

Office: CALIFORNIA SERVICE CENTER

Date: **JUN 23 2009**

IN RE: Petitioner:
Beneficiary:



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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, California Service Center. On July 17, 2007, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1) and 8 C.F.R. §103.3(a)(2)(v)(B)(1).

The petitioner is in the automobile components business.¹ It seeks to employ the beneficiary as a mechanical engineer. As required by statute, the petition was accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor (DOL). The director approved the petition on November 2, 2000. On July 17, 2007, the director issued a NOIR, finding that the petition had been approved based on a fraudulent Form ETA 750. The petitioner failed to respond to the NOIR and, on January 4, 2008, the director revoked the approval of the petition.

The Form I-290B, Notice of Appeal or Motion, was signed and filed by the beneficiary, [REDACTED] U.S. Citizenship and Immigration Services (USCIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). Accordingly, the appeal must be rejected as filed by a person not entitled to file. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

Further, the appeal must be rejected because it was untimely filed. The regulation at 8 C.F.R. § 205.2(d) provides that a petitioner "may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation." Three additional days are provided if the notification of revocation was mailed. The date of filing is not the date of mailing, but the date of actual receipt. See 8 C.F.R. § 103.2(a)(7)(i).

As noted above, the NOR was served by the director on January 4, 2008. The director properly gave notice to the petitioner that it had 18 days to file the appeal. The appeal was received on February 25, 2008, 52 days after the decision was issued.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 18-day time limit for filing an appeal. 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. However, as this appeal is being rejected as filed improperly, the director shall not treat the appeal as a motion.

¹ According to California state corporate records, the petitioner's corporate status in California has been "suspended." Therefore, since the corporation has lost all rights and powers to transact business, the company can no longer be considered a legal entity in the United States. Therefore, if this appeal were not being rejected for the reasons set forth herein, this would call into question the petitioner's continued eligibility for the benefit sought.

Regardless, as the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider as set forth at 8 C.F.R. §103.5, the untimely appeal would not be treated as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2) even if it were not being rejected as filed by the beneficiary.

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1) and 8 C.F.R. §103.3(a)(2)(v)(B)(1).

ORDER: The appeal is rejected as improperly filed.