

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

PUBLIC COPY

[Redacted]

B6

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: OCT 04 2010

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:

SELF-REPRESENTED

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 \$585. 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 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 served the petitioner with notice of intent to revoke the approval of the preference visa petition. The director subsequently revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely.

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. If the last day of the designated period falls on a Saturday, Sunday or a legal holiday, the period will run until the end of the next day, which is not a Saturday, Sunday, or legal holiday. *See* 8 C.F.R. § 1.1(h). 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). The director’s Notice of Revocation properly advised the petitioner that it had 15 days (18 if the notice was mailed) to file an appeal.

United States Citizenship and Immigration Services (USCIS) records indicate that the Immigrant Petition for Alien Worker (I-140) was initially approved on August 15, 2007. The director subsequently concluded that the I-140 petition was approved in error and notified the petitioner of his intent to revoke the petition on April 2, 2009. The director determined that the petitioner’s response did not overcome the grounds for revocation and the petition’s approval was revoked on June 8, 2009, pursuant to section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155.

The petitioner filed an appeal on July 10, 2009. The 18-day deadline for filing an appeal from the director’s decision of June 8, 2009 to revoke the petition’s approval fell on Friday, June 26, 2009. Here, the director received the appeal on July 10, 2009, 32 days after the decision was issued.¹ Accordingly, the petitioner’s appeal is rejected as untimely filed. An untimely appeal shall be rejected as improperly filed. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Neither the 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.

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 policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. §

¹ The petitioner states that it mailed the appeal on June 26. A receipt date is assigned when properly filed, not the date of mailing. 8 C.F.R. § 103.2(a)(7)(i).

103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal does not meet the requirements of a motion. The appeal does not state new facts to be proved in the reopened proceeding supported by affidavits or other documentary evidence as required by 8 C.F.R. § 103.5(a)(2). The petitioner did not submit any brief or evidence with the appeal, or after filing the appeal despite checking the box that it would submit additional evidence within 30 days. More than a year later, the AAO has received no documentation in support. Nor does the appeal state reasons for reconsideration supported by pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.