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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

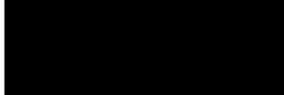


**U.S. Citizenship
and Immigration
Services**



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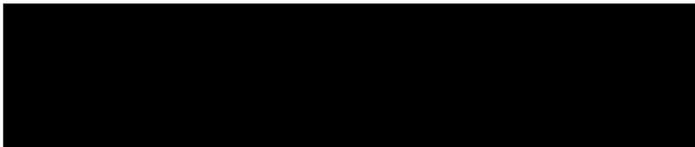
DATE: **APR 15 2011** OFFICE: TEXAS SERVICE CENTER

FILE: 

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:



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 \$630. 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The approval of the employment-based immigrant visa petition was revoked by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The petitioner claims to be a gas station and convenience store. It seeks to permanently employ the beneficiary in the United States as a manager. The petitioner requests classification of the beneficiary as a skilled worker or professional pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3).¹ The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is August 21, 2001, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

After initially approving the petition on October 31, 2008, the director issued a Notice of Intent to Revoke (NOIR) the petition on September 9, 2009. The NOIR instructed the petitioner to submit additional evidence to establish the beneficiary's claimed employment experience and to resolve an inconsistency in the record concerning the location of the offered employment.

On November 5, 2009, the director revoked the approval of the petition.² The Notice of Revocation (NOR) states that the evidence submitted in response to NOIR did not overcome the issues raised in the NOIR.

Counsel's appeal was received by U.S. Citizenship and Immigration Services (USCIS) on May 3, 2010, 179 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).

On appeal, the counsel claims that it did not receive the NOR until April 19, 2010. However, USCIS records indicate that the NOR was in fact issued on November 5, 2009, and counsel has not submitted sufficient evidence to establish that USCIS records are incorrect.

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.

¹ Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

² 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."

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).

In the instant case, on the Form I-290B, Notice of Appeal or Motion, the petitioner stated that it will submit additional evidence of the beneficiary's employment experience. On Form I-290B, the petitioner indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. Since the filing of the appeal, counsel has made multiple requests for additional time to submit additional evidence. However, to date, the AAO has not received any additional evidence. Accordingly, there is not a sufficient basis to remand the instant case as a motion to reopen or reconsider.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The appeal does not meet the requirements of a motion to reopen or reconsider. Therefore, the appeal must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

ORDER: The appeal is rejected.