

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

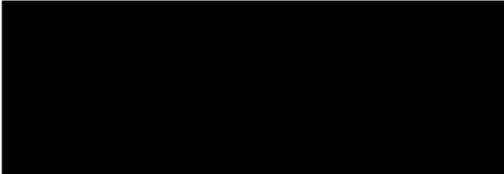


U.S. Citizenship  
and Immigration  
Services



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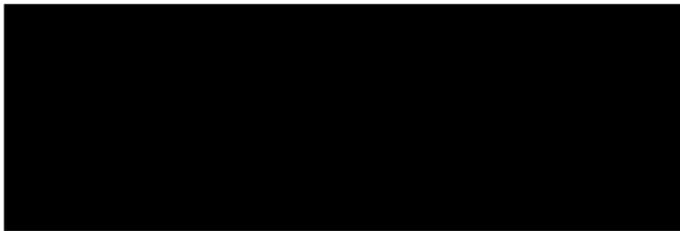
Date: **DEC 27 2012** Office: CHICAGO FIELD OFFICE

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.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The previous approval of the employment-based preference visa petition was revoked by the Director, Chicago Field Office, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must file the complete appeal within 30 days of service of the unfavorable decision. In the case of a revocation on notice, the appeal must be filed within 15 days. 8 C.F.R. § 205.2(d). If the decision was mailed, the appeal must be filed within 33 days (or 18 days for revocations). See 8 C.F.R. § 103.8(b). 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 record reflects that the field office director issued a Notice of Revocation revoking the previous approval of the petition on December 4, 2009. Although the director erroneously informed the petitioner that it had 30 days to file an appeal to the revocation of the previously approved petition, neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend this 18 day time limit.

The record shows that counsel attempted to file the appeal on December 22, 2009, but submitted the appeal to the AAO rather than the Chicago Field Office. Counsel subsequently filed the appeal with the director of the field office in Chicago, Illinois on January 6, 2010, or 33 days after the decision had been issued. Accordingly, the appeal to the revocation of the previously approved petition was untimely filed.

If an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director, Chicago Field Office. 8 C.F.R. § 103.5(a)(1)(ii). As required by 8 C.F.R. § 103.3(a)(2)(ii)-(iv), the director reviewed the appeal prior to forwarding it to the AAO, and did not conclude that it met the requirements of a motion or otherwise warrant favorable action.<sup>1</sup>

The untimely appeal must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

**ORDER:** The appeal is rejected.

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<sup>1</sup> Upon review of the record, the AAO notes that the petition's approval should have been revoked by the Nebraska Service Center rather than the Chicago, Field Office. See Memo. from Paul W. Virtue, Executive Associate Commissioner (Acting), Office of Programs, U.S. Immigration & Naturalization Service, to Regional Directors, *et al.*, *Revocation of Employment-Based Petitions (I-140s)* (February 27, 1997), indicating that a petition which is believed by a field office to have been incorrectly approved is to be returned to the service center that approved the petition along with a memorandum of explanation. The service center will then either initiate revocation proceedings or reaffirm the petition and return it to the field office along with a memorandum of explanation for the reaffirmation. However, as the AAO lacks jurisdiction to consider the untimely appeal, it will not disturb the decision of the Chicago Field Office in this matter.