

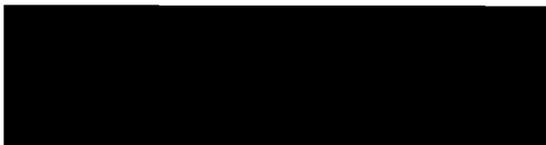
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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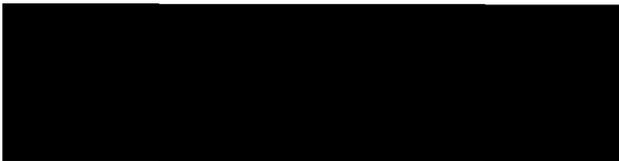
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Date: **MAR 13 2012** Office: TEXAS SERVICE CENTER FILE: 

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.

Thank you,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: On November 10, 2003, United States Citizenship and Immigration Services (USCIS), Texas Service Center (TSC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The TSC director (“the director”) initially approved the employment-based immigrant visa petition on July 29, 2004. The director, however, revoked the approval of the petition on October 7, 2008. The petitioner subsequently appealed the director’s decision to revoke the petition’s approval to the Administrative Appeals Office (AAO). The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen and reconsider.

In order to properly file an appeal, the regulation at 8 C.F.R. § 205.2(d) provides that the affected party must file the complete appeal **within 15 days** after service of the decision to revoke the approval. 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. See 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the Notice of Revocation (NOR) on October 7, 2008. Counsel dated the appeal November 5, 2008, and the appeal was received by the director on November 6, 2008, 29 days after the decision was issued. Accordingly, the appeal was untimely filed.

We note that the director did not properly give notice to the petitioner that it had 15 or 18 days to file the appeal. Nevertheless, neither the Immigration and Nationality Act (the Act) nor the pertinent regulations grant the AAO authority to extend the 15 or 18-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected.

Regardless of the late 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 United States Citizenship and Immigration Services (USCIS) 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. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The matter will therefore be returned to the director. If the director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

As the appeal was untimely filed, the appeal must be rejected.

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ORDER: The appeal is rejected.