(b)(6)

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

DATE: APR 0 3 2013

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), revoked the approval of the employment-based immigrant visa petition. The appellant[1] appealed the decision 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.

An appeal of a decision to revoke a petition's approval must be filed within 15 days of service. 8 C.F.R. § 205.2(d). If the unfavorable decision was mailed, the appeal must be filed within 18 days. 8 C.F.R. § 103.8(b). An untimely appeal must be rejected as improperly filed. Neither the Act nor the regulations grant the AAO authority to extend this time limit.

The filing date is the actual date of receipt at the location designated for filing. 8 C.F.R. § 103.2(a)(7)(i). The appeal must be signed and submitted with the correct fee. *Id.*

The director issued the decision revoking the petition's approval on June 18, 2009. The director properly notified the petitioner that it had 18 days to file an appeal. On October 7, 2009, 111 days after the director's revocation of the petition's approval, the appellant filed a motion to reopen and reconsider the revocation decision, which the director dismissed as untimely on November 30, 2010. The appellant filed this appeal on August 17, 2011, or 260 days after the decision on the petitioner's motion was issued.[2] Accordingly, the appeal is untimely.

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, Texas Service Center. 8 C.F.R. § 103.5(a)(1)(ii).

The record does not establish whether the director had an opportunity to review the untimely appeal to determine its eligibility as a motion to reopen or reconsider. *See* 8 C.F.R. § 103.5(a)(1)(i) (the director may, in his discretion, excuse the late filing of a motion to reopen where the filing party demonstrates that "the delay was reasonable and was beyond [its] control"). The AAO will therefore return the matter to the director.

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[1] The appellant, [redacted] claims to be the "successor-in-interest" of the petitioner. [redacted] submits evidence of its purported acquisition of the petitioner's business assets in the Washington, D.C. area as of April 2, 2008. Because the AAO finds that the appeal's untimeliness deprives this Office of jurisdiction, the AAO has not reviewed the appellant's claim and expresses no opinion on whether [redacted] has established a successor relationship to the petitioner. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986) (an entity other than the petitioner or labor certification employer must show that it acquired the essential rights and obligations necessary to carry on the business to continue offering the same job opportunity for immigration purposes).

[2] Even if the AAO treated the appeal as challenging the November 30, 2010 dismissal of the motion, the appeal would be untimely. Moreover, the appellant specifically states on Form I-290B, Notice of Appeal or Motion, that it appeals the director's revocation decision of June 2009.

If the director determines that the untimely appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued. If the director determines that the untimely appeal does not meet the requirements of a motion, no new decision will be issued.

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

ORDER: The appeal is rejected.