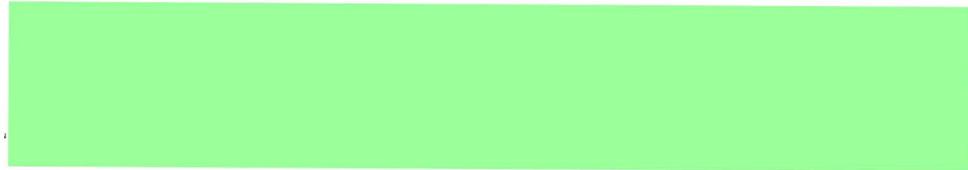




U.S. Citizenship  
and Immigration  
Services

(b)(6)

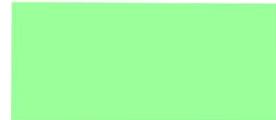


DATE:

APR 04 2013

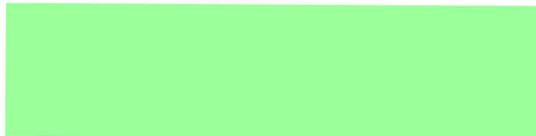
OFFICE: VERMONT SERVICE CENTER

FILE:



IN RE:

Petitioner:

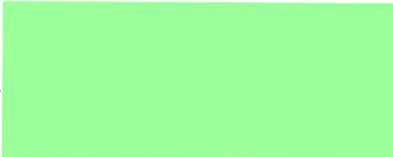


Beneficiary:

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, Vermont Service Center, revoked the approval of the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be rejected as untimely filed. The AAO will forward the matter to the appropriate Service Center, however, for consideration as a motion to reopen or reconsider.

The petitioner<sup>1</sup> must appeal a decision to revoke the approval of a petition 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 Notice of Revocation (NOR) on September 30, 2009. The NOR properly stated that the petitioner had 15 days to file the appeal. The petitioner filed the Form I-290B, Notice of Appeal or Motion, on October 29, 2009, or 29 days after the decision was issued. Accordingly, the appeal is untimely.

On appeal, the petitioner did not submit a brief and/or additional evidence as it indicated it would. The petitioner, however, states that it did not receive the Notice of Intent to Revoke (NOIR) or the NOR. Counsel states that the petitioner did not learn of the revocation of the approval of the petition until the revocation caused U.S. Citizenship and Immigration Services (USCIS) to deny the beneficiary's application for adjustment of status. According to USCIS records, the director denied the beneficiary's adjustment application on October 5, 2009, five days after issuing the NOR.

---

<sup>1</sup> In the Notice of Revocation, the director cited corporate records showing that the labor certification employer, [REDACTED], underwent two mergers and a name change since filing the labor certification on April 30, 2001. The director did not consider on the record, however, whether the current employer is a successor-in-interest to [REDACTED] the company that filed the labor certification and the Form I-140, Immigrant Petition for Alien Worker. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986) (explaining that a petitioner seeking to continue sponsorship of the same job opportunity for immigration purposes must show it acquired the essential rights and obligations to carry on the business of the entity that filed the labor certification). In any further filings in this matter, the current employer must establish its successor relationship to [REDACTED] by satisfying three conditions. First, it must fully describe and document the transaction(s) transferring ownership of all, or a relevant part of, the predecessor. Second, it must demonstrate that the job opportunity remains the same as originally offered on the labor certification. Third, it must prove by a preponderance of the evidence that it qualifies for the immigrant visa in all respects, including its continuous ability to pay the offered wage since the petition's priority date. *See Dial Auto Repair*, 19 I&N Dec. at 482.

The director must notify a petitioner of both the intent to revoke and the actual revocation the approval of the petition. *See* 8 C.F.R. §§ 205.2(b), (c). Notice to the petitioner's representative constitutes notice to the petitioner. *See* 8 C.F.R. § 292.5(a).

The record shows that the director was not required to notify the petitioner's current counsel or former representative of the NOIR or the NOR. Current counsel did not submit a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, on behalf of the petitioner until the petitioner filed the instant appeal of the revocation. The petitioner's previous representative, an immigration consultant who, according to the record, pled guilty in 2007 to submitting false labor certifications and false documents in support of immigrant visa petitions, was not accredited in accordance with the regulation at 8 C.F.R. § 292.2.

The NOR indicates that the director revoked the approval of the petition because the petitioner failed to establish, in accordance with the NOIR, that it had authorized its previous representative to file a *bona fide* labor certification and a *bona fide* immigrant visa petition on its behalf.

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, or an appropriate new official if jurisdiction has changed. 8 C.F.R. § 103.5(a)(1)(ii).<sup>2</sup>

Here, the record is unclear as to whether the appropriate new official considered whether this appeal met the requirements of a motion or otherwise warranted favorable action pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(ii)-(iv). The AAO will forward the matter to the Director, Texas Service Center, for consideration of the untimely appeal's eligibility as a motion to reopen or reconsider in accordance with 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

If the Director, Texas Service Center, 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, however, must be rejected pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

**ORDER:** The appeal is rejected.

---

<sup>2</sup> The Director, Texas Service Center, now has jurisdiction over employment-based immigrant visa petitions for offered positions in Virginia. *See* USCIS Fact Sheet, March 24, 2006, at [www.uscis.gov/files/pressrelease/BiSpecPh01\\_24Mar06PR.pdf](http://www.uscis.gov/files/pressrelease/BiSpecPh01_24Mar06PR.pdf) (accessed February 25, 2013) (as of April 1, 2006, the Vermont Service Center no longer adjudicates Form I-140 petitions as part of USCIS's bi-specialization initiative).