

(b)(6)



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

DATE: **APR 24 2013** OFFICE: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:
[REDACTED]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, revoked the approval of the employment-based immigrant visa petition. The appellant¹ 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 or reconsider.

The petitioner 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.*

On February 22, 2003, the petitioner filed a Form I-140 on behalf of the beneficiary which was approved on December 4, 2003. On July 19, 2005, the petitioner requested that the instant petition be withdrawn. On January 12, 2006, the USCIS automatically revoked this petition following this request by the petitioner to withdraw the petition. On April 23, 2009, the director reopened the petition *sua sponte* and issued a notice of intent to revoke the instant petition (NOIR) due to the criminal case in which an employee of the petitioner pled guilty to several federal offenses involving immigration fraud. The director afforded the petitioner 30 days to provide evidence that the approval of the petition should not be revoked. The petitioner did not respond to this NOIR.

The director issued the decision revoking the approval of the petition on June 18, 2009 because the petitioner did not respond to the NOIR. The director properly gave notice to the petitioner that there is no right to appeal this decision, but that it had 18 days to file a motion to reopen or reconsider.

Prior to the instant appeal, on October 7, 2009, the petitioner filed a motion to reopen and motion to reconsider the director's revocation of the Form I-140. The director denied this motion for being untimely filed and also addressed the petitioner's claim of ineffective assistance of counsel, stating that the petitioner had not demonstrated how the petitioner's attorney's legal advice or inaction led to the untimely filing of the motion. The director dismissed the motion accordingly.

¹ The appellant, [REDACTED] doing business as [REDACTED] claims to be the "successor-in-interest" of the petitioner, [REDACTED] submitted evidence of its purported acquisition of certain of the petitioner's business assets. Because the AAO finds that the appeal's untimeliness deprives it of jurisdiction, the AAO has not reviewed the appellant's claim and expresses no opinion on whether [REDACTED] has established a *bona fide* successor relationship to the petitioner. See generally *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).

The appellant filed the Form I-290B, Notice of Appeal or Motion, checking the box indicating it was filing an appeal, on August 16, 2011, or 789 days after the decision revoking the petition was issued, or 678 days after the denial of the motion. 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).

As the appeal brief and additional evidence in this matter were submitted directly to the AAO in accordance with 8 C.F.R. § 103.3(a)(2)(viii), the director did not have an opportunity to review the untimely appeal to determine whether it meets the requirements of a motion to reopen or reconsider. As stated above, on January 12, 2006, the USCIS automatically revoked this petition following a request by the petitioner to withdraw the petition. On April 23, 2009, the director reopened the petition *sua sponte* and issued a notice of intent to revoke the instant petition, and on June 18, 2009, the director revoked the approval of the petition. In view of the petitioner's request that the petition be withdrawn, the June 18, 2009 revocation was erroneous. The record will reflect that the petition was withdrawn by the petitioner. *Matter of Cintron*, 16 I&N Dec. 9 (BIA 1976).

Therefore, the matter will be returned to the director. 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 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

ORDER: The appeal is rejected.