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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: DEC 0 5 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas 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 return the matter to the director for consideration as a motion to reopen and 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.*

The director issued the decision denying the petition on February 25, 2013. The director properly gave notice to the petitioner that it had 18 days to file the appeal. The petitioner filed the Form I-290B, Notice of Appeal or Motion, on March 21, 2013, or 24 days after the decision was issued. 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. Therefore, the matter will be returned to the director. It is noted that in addition to the issues outlined in the director's Notice of Intent to Revoke concerning the petitioner's Federal employer Identification Number, whether the petitioner would be the beneficiary's actual employer, and whether the position was full time instead of employment on an "as needed" basis, a successor-in-interest relationship may have arisen since the filing of the petition and the petitioner's ability to pay the proffered wage may be affected. The director may find it necessary to issue a second Notice of Intent to Revoke on all of these issues. The director should determine whether the submissions in the record meet the requirements of a motion to reopen and reconsider and issue an appropriate decision on the matter as outlined herein.

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

In addition, the regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B), in pertinent part, states,

> For purposes of this section and §§ 103.4 and 103.5 of this part, affected party (in addition to the Service) means the person or entity with legal standing in a proceeding.

The Form I-290B was filed by counsel, listing the petitioner as Applied Thought Auditors and Consultants, Inc. Although the representative of the business is the same as the representative of the petitioner, the business name differs from that listed as the petitioner. With no evidence in the record that is a valid successor-in-interest of the petitioner, the appeal may be rejected on this basis as well.

ORDER: The appeal is rejected.