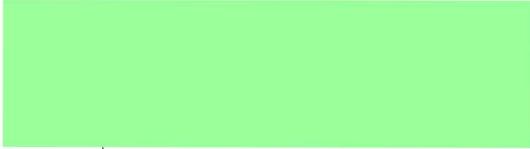




**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



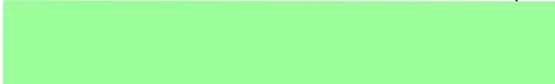
Date: Office: TEXAS SERVICE CENTER

**JAN 24 2013**

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:

SELF REPRESENTED

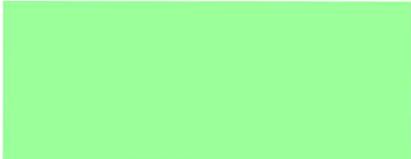
INSTRUCTIONS:

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

Cc



**DISCUSSION:** On August 27, 2003, United States Citizenship and Immigration Services (USCIS), Vermont Service Center (VSC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the VSC director on July 9, 2004. However, the Director of the Texas Service Center (TSC) revoked the approval of the immigrant petition on May 26, 2009, and the petitioner subsequently appealed the director's decision. The decision of the director is now before the Administrative Appeals Office (AAO). The appeal will be rejected as untimely filed and pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

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. § 103.8(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 May 26, 2009. It is noted that the director properly gave notice to the petitioner that it had 18 days to file the appeal. Although counsel dated the appeal June 11, 2009, it was not received by USCIS until June 16, 2009, which was 21 days after the NOR. Accordingly, the appeal was untimely filed.

Neither the Immigration and Nationality Act (the Act) nor the pertinent regulations grant the AAO authority to extend the 18-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, 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.

In this case, even if the submitted materials met the requirements of a motion to reopen or a motion to reconsider, it would be rejected on an alternate ground. Specifically, the appeal in this case was not submitted by the petitioner.

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.

Further, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1) states, "An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed." As no evidence of record suggests that the original petitioner consented to the filing of the appeal, the appeal was improperly filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1) and must be rejected.

Here, the Form I-290B Notice of Appeal or Motion was signed by [REDACTED] The accompanying, properly executed Form G-28, Notice of Entry of Appearance as Attorney or

Accredited Representative identifies [REDACTED] as the beneficiary's attorney.<sup>1</sup> The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically prohibits a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. There is no evidence in the record that the petitioner consented to the filing of the appeal.

Because the appeal must be rejected on this alternate ground, we will not consider whether the submissions meet the requirements of a motion to reopen or a motion to reconsider. In addition, we will not elaborate on whether the beneficiary had the requisite work experience before the priority date, whether the petitioner had the continuing ability to pay the proffered wage from the priority date, and whether the director's decision to revoke the approval of the petition was based on good and sufficient cause, in accordance with Section 205 of the Act, 8 U.S.C. § 1155.

**ORDER:** The appeal is rejected as improperly filed. The director's decision to revoke the approval of the petition remains undisturbed.

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<sup>1</sup> The attorney listed is ([REDACTED]), Nokham Law Offices, [REDACTED].