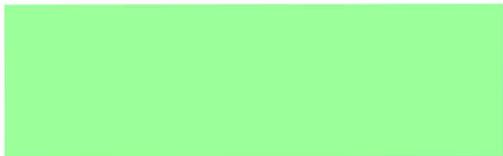


(b)(6)

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

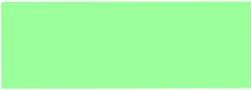


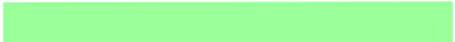
U.S. Citizenship  
and Immigration  
Services



DATE: **MAR 14 2013**

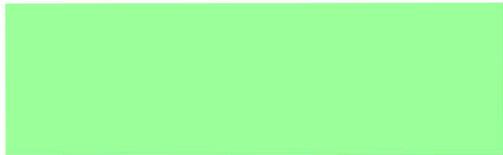
OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)

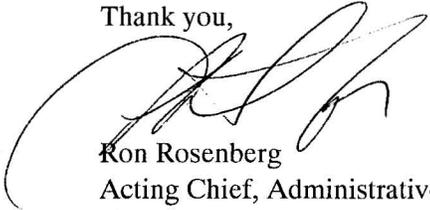
ON BEHALF OF PETITIONER:



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, 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<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 revocation of the petition on August 17, 2004. 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 September 17, 2004, or thirty-one days after the decision was issued. Accordingly, the appeal is untimely.

In his appeal brief, counsel asserts that the appeal of the revocation is timely despite the director's instruction to file the appeal within fifteen days. Counsel states that the instructions on Form I-290B state that the petitioner has thirty calendar days after the service of the decision to appeal. The regulations at 8 C.F.R. § 205.2(d) and 8 C.F.R. § 103.8(b) are sufficient notice to the petitioner of the allotted time to appeal a revocation, which is eighteen days if mailed.

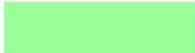
If an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director, Texas Service Center. 8 C.F.R. § 103.5(a)(1)(ii).

Whether the director had an opportunity to review the untimely appeal to determine whether it meets the requirements of a motion to reopen or reconsider is unclear.

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

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<sup>1</sup> Texas corporate records list the petitioner's status as "forfeited existence" as of July 24, 2009. See [https://ourcpa.cpa.state.tx.us/coa/servlet/cpa.app.coa.CoaGetTp?Pg=tpid&Search\\_Nm=binish%20&Button=search&Search\\_ID: \[REDACTED\]](https://ourcpa.cpa.state.tx.us/coa/servlet/cpa.app.coa.CoaGetTp?Pg=tpid&Search_Nm=binish%20&Button=search&Search_ID: [REDACTED]) (accessed February 27, 2013). If the petitioner's organization is no longer in business, then no *bona fide* job offer exists, and the petition and appeal are therefore moot. Even if the appeal could be otherwise sustained, the approval of the petition would be subject to automatic revocation due to the termination of the petitioner's business. See 8 C.F.R. § 205.1(a)(iii)(D).



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.