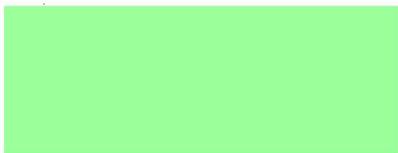




U.S. Citizenship
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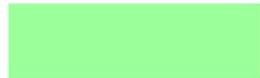


DATE:

MAR 18 2013

OFFICE: TEXAS SERVICE CENTER

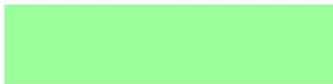
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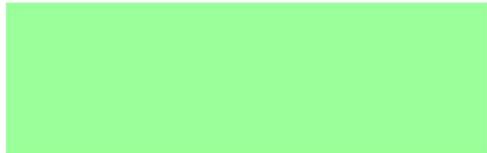
Petitioner:

Beneficiary:



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

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, denied 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 an unfavorable decision within 30 days of service. 8 C.F.R. § 103.3(a)(2)(i). If the unfavorable decision was mailed, the appeal must be filed within 33 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 December 23, 2011. The director properly gave notice to the petitioner that it had 33 days to file the appeal. The petitioner's Form I-290B, Notice of Appeal or Motion, was received and accepted for filing on January 27, 2012, or 35 days after the decision was issued. Accordingly, the appeal is untimely.¹

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).

From the record, it is not clear that the director had 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. 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.² If the

¹ The record contains the envelope the petitioner used to mail the Form I-290B which demonstrates that it was mailed on January 25, 2012, the day it was due, and that the USCIS received it on January 27, 2012. 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).

² According to the New York Department of State corporation website, it appears that the petitioner was dissolved on May 15, 1981. *See* the following:

http://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=787805&p_corpid=699970&p_entity_name=%67%61%74%65%20%68%69%6C%6C%20%64%61%79%20%63%61%6D%70&p_name_type=%25&p_search_type=%42%45%47%49%4E%53&p_srch_results_page=0 (accessed March 12, 2013). If your organization is no longer in business, then no *bona fide* job offer exists. Even if the appeal could be otherwise sustained, the approval of the petition would be subject to automatic revocation due to the termination of your organization's business. *See* 8 C.F.R. § 205.1(a)(iii)(D). If the director determines that this untimely appeal meets the requirements of a motion to reopen or reconsider, this issue must be resolved.

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.