**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: MAY 17 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 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,

for
Ron Rosenberg
Acting Chief, Administrative Appeals Office

**DISCUSSION**: The Director, Texas Service Center, revoked the immigrant visa petition on June 22, 2009. A subsequent motion to reopen and motion to reconsider was rejected as untimely by the director. The petitioner filed an appeal of the director's rejection of the motions and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 revoking the petition on June 23, 2009. The petitioner filed a subsequent Motion to Reopen and Motion to Reconsider with the director on October 7, 2009. The director issued a decision rejecting the motions as untimely on December 14, 2010. The petitioner filed the Form I-290B, Notice of Appeal or Motion, on September 2, 2011, or 262 days after the decision was issued.[1] 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 required by 8 C.F.R. § 103.3(a)(2)(ii)-(iv), the director reviewed the appeal prior to forwarding it to the AAO, and did not conclude that it met the requirements of a motion or otherwise warrant favorable action.

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

**ORDER**: The appeal is rejected.

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[1] Although counsel asserts in both the untimely motions and the untimely appeal that the decision revoking the petition was not received by the petitioner, the director specifically noted in the decision rejecting the motion that the notice of revocation was properly mailed to the petitioner's correct address of record and was not returned as undeliverable. Further, counsel provides no explanation on appeal as to why the appeal was not filed timely.