

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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**



B6

FILE:

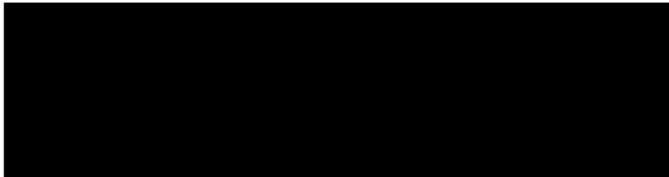
Office: TEXAS SERVICE CENTER Date:

**FEB 28 2011**

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The approval of the employment-based immigrant visa petition was revoked by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed; however, the matter will be returned to the director as a motion to reconsider.

The petitioner seeks to permanently employ the beneficiary as a building maintenance worker. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).<sup>1</sup> The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is August 30, 2004, which is the date the labor certification was accepted for processing by the DOL. See 8 C.F.R. § 204.5(d).

On November 15, 2010, the director revoked the approval of the petition with a finding of fraud.<sup>2</sup> The reasons given for revocation include derogatory information relating to the *bona fides* of the job offer, the petitioner's ability to pay the proffered wage and the beneficiary's previous employment experience. Counsel's appeal was received by U.S. Citizenship and Immigration Services (USCIS) on Tuesday, December 7, 2010, 22 days after the decision was issued. An appeal of a revocation must be filed within 15 days after service of the decision. See 8 C.F.R. § 205.2(d). If the decision was mailed, the appeal must be filed within 18 days. See 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt by USCIS. See 8 C.F.R. § 103.2(a)(7)(i).

It is noted that the director's notice of revocation (NOR) stated the correct period of time that the petitioner had to file an appeal. The petitioner, through counsel, requested to be excused for the late filing based on a computer error in his office. Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing an appeal. As the appeal was untimely filed, it 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. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). In addition, a motion to reconsider must establish that the decision was incorrect based on the evidence of record

---

<sup>1</sup> Section 203(B)(3)(A) of the Act provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

<sup>2</sup> Section 205 of the Act permits the director to revoke the approval of a petition "at any time, for what he deems to be good and sufficient cause."

at the time of the initial decision. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The evidence and arguments in the record meet the requirements of a motion to reconsider. We note that the petitioner cited pertinent precedent in support of its argument, *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967). The case will therefore be remanded to the director for further consideration. This decision does not address whether the evidence in the record is sufficient to overcome the grounds of the NOR.

**ORDER:** The appeal is rejected. The petition is returned to the director as a motion to reconsider for further action in accordance with the foregoing and entry of a new decision.