



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF I-US, INC.

DATE: JUNE 18, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software services and consulting company, seeks to employ the Beneficiary as a systems analyst. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director initially approved the Form I-140, Immigrant Petition for Alien Worker. The Director subsequently issued a notice of intent to revoke (NOIR) the approval of the petition. Following the Petitioner's response to the NOIR, the Director issued a notice of revocation (NOR) on July 23, 2018. The Petitioner filed a subsequent motion to reopen and motion to reconsider. The Director dismissed the combined motion as untimely, indicating that the motion was received by U.S. Citizenship and Immigration Services (USCIS) on August 31, 2018, which is more than 33 days after issuance of the July 23, 2018, NOR. In correspondence in conjunction with the appeal's transmittal to our office, the Director indicated that the motion denial for untimely filing was correct; however the Director stated that the decision should have held the Petitioner to an 18-day filing window rather than a 33-day filing window because the underlying decision was a revocation.

The regulation at 8 C.F.R. § 205.2(d) provides that a petitioner whose petition's approval has been revoked may appeal the decision within 18 days. 8 C.F.R. § 205.2(d). This time period includes three days added for service by mail. 8 C.F.R. § 103.8(b). However, the 18-day filing period for appeals of revocations does not apply to motions. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Form I-290B, Notice of Appeal or Motion, within 33 days of the date of the NOR, which includes three days added for service by mail.¹ 8 C.F.R. § 103.5(a)(1)(i).

Therefore, the Petitioner is rightly afforded 33 days from the date of the revocation decision to file a motion with the Director. Based on the information in the record, we are unable to determine if the motion was properly and timely filed. We will therefore remand the matter to the Director for further fact finding regarding the correct receipt date of the motion. If the Director finds that the motion was

¹ Failure to file a motion to reopen before the 33-day period expires may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

properly and timely filed, then the Director shall consider the merits of the Petitioner's initial motion to reopen and motion to reconsider. The Director may request any additional evidence considered pertinent. Similarly, the Petitioner may provide additional evidence within a reasonable period of time to be determined by the Director. Upon receipt of all the evidence, the Director will review the entire record and enter a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of I-US, Inc.*, ID# 4296251 (AAO June 18, 2019)