U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 97 190 50776 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Other Worker pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3).

ON BEHALF OF PETITIONER:

[redacted]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The Director, Western Service Center, denied the nonimmigrant visa petition. The matter is now ostensibly before the Administrative Appeals Office on appeal. The appeal will be rejected and the case remanded.

The director denied the petition because the petitioner who filed the Form I-140 petition was not the employer named on the Form ETA 750 Application for Alien Employment Certification. As such, the director's decision constitutes a finding that the petition is not supported by a valid labor certification.

Although the director's November 8, 1997 decision advised that an appeal was available, that information was in error. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1(U) *supra*; 8 C.F.R. § 103.3(a)(iv).

Among the appellate authorities are appeals from denials of petitions for immigrant visa classification based on employment, "except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act." 8 C.F.R. § 103.1(f)(3)(iii)(B) (2003 ed.).

Because the director's decision constitutes a finding that the petition is not supported by a valid labor certification, this office lacks jurisdiction to consider an appeal from the director's decision.

However, the AAO remands the case to the director in order that he consider whether counsel's submissions satisfy the requirements of a motion to reopen pursuant to 8 C.F.R. § 103.5.

No appeal of the denial in this matter is permitted and the ostensible appeal must be rejected.

ORDER: The appeal is rejected and the matter remanded to the director.