U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: LIN 07 117 52964 Office: NEBRASKA SERVICE CENTER Date: NOV 03 2008

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, on June 22, 2007. On July 11, 2007, the petitioner appealed the decision to the Administrative Appeals Office (AAO), and, on February 14, 2008, the AAO dismissed the appeal. On March 14, 2008, the petitioner again filed an appeal with the AAO. The appeal will be rejected.

The petitioner endeavored to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Act as a multinational executive or manager. The director denied the petition concluding that the petitioner failed to establish that the beneficiary has been or will be employed in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal on July 11, 2007, and the AAO dismissed the petitioner's appeal in a decision dated February 14, 2008.

On March 14, 2008, counsel for the petitioner filed the instant appeal. Counsel indicated on Form I-290B, Notice of Appeal or Motion, that he is filing an appeal, and that a brief and/or additional evidence will be submitted within 30 days. On Form I-290B, counsel claims that his brief will rely in part on an unpublished AAO decision, *Matter of Irish Dairy Board,* [redacted] (AAO Nov. 16, 1989), and the Foreign Affairs Manual (FAM) in arguing that the director should have classified the beneficiary as a manager of an essential function. Counsel submitted a brief to the AAO within 30 days.

The petitioner's appeal must be rejected. The AAO does not exercise appellate jurisdiction over AAO decisions. 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; 8 C.F.R. § 103.3(a)(iv).** Accordingly, as the appeal is not properly before the AAO, it was not properly filed and must be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(*1*).

Furthermore, it should be noted that the petitioner did have the option of filing a motion to reopen or reconsider the AAO's most recent decision pursuant to 8 C.F.R. § 103.5. However, the petitioner's appeal does not meet the requirements of a motion. As noted above, the petitioner stated that a brief would be submitted in 30 days. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief to the AAO in connection with an appeal, no such provision applies to a motion. The brief and any new evidence must be submitted with the motion. *See* 8 C.F.R §§ 103.5(a)(2) and (3). Therefore, the AAO would not consider the brief even if the appeal had been properly filed instead as a motion.

Finally, the legal bases for the appeal given in the Form I-290B, i.e., an unpublished AAO decision and the FAM, do not constitute "pertinent precedent decisions" which could have established that the AAO's decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all Citizenship and Immigration Services (CIS) employees in the administration of the Immigration and Nationality Act, unpublished decisions are not similarly binding. Likewise, the FAM is not binding upon CIS. *See Avena v. INS*, 989 F. Supp. 1 (D.D.C. 1997); *Matter of Bosuego*, 17 I&N 125 (BIA 1979). Accordingly, the appeal, even if it could have been treated as a motion, would have been dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

ORDER: The appeal is rejected.