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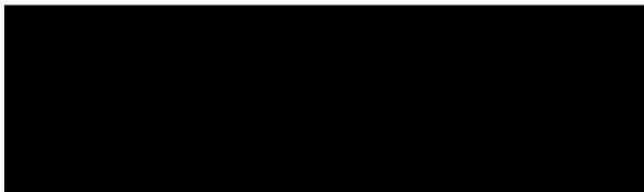
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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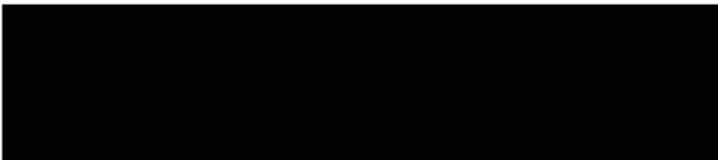
Office: NEBRASKA SERVICE CENTER

Date: **NOV 18 2009**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The petitioner moved to reopen the decision, and the director denied the motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a software development and consulting business. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition was not accompanied by an original certification by the Department of Labor as required by statute. The director denied the petition for this reason noting that the original labor certification had already been submitted with an approved Form I-140, Immigrant Petitioner for Alien Worker, and that it was used by the beneficiary of that petition to adjust to permanent resident status. The petitioner filed a motion to reopen this decision, which was subsequently denied by the director.

The AAO's appellate jurisdiction is set forth at 8 C.F.R. § 103.1(f)(3)(E)(iii) (2003) which provides for appellate jurisdiction over decisions on petitions for employment-based visa classifications or special immigrants or entrepreneurs pursuant to 8 C.F.R. §§ 204.5 and 204.6 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. In this matter, the petitioner was denied because of the lack of a labor certification entitling the petitioner to the benefit sought. Accordingly, as there is no appeal from such a denial, the AAO has no jurisdiction to issue a decision in this case, and the appeal must be rejected. Furthermore, there is no appeal from the denial of the motion because the original decision was not appealable to the AAO. 8 C.F.R. § 103.5(a)(6).

ORDER: The appeal is rejected.