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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 and Immigration Services

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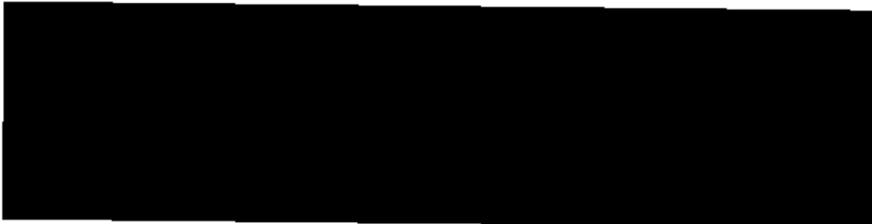


FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: OCT 14 2010

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

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center on January 22, 2008. The petitioner filed a motion to reopen the decision on February 21, 2008, which the director denied on March 31, 2008. The petitioner then appealed the decision to the Administrative Appeals Office (AAO) on May 1, 2008. The appeal will be summarily dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a skilled worker. The director determined that the petitioner had failed to demonstrate its ability to pay the beneficiary the proffered salary from the priority date of October 5, 2006.

Both with its motion to reopen and its appeal, the petitioner submitted evidence regarding its ability to pay. The AAO finds that the Texas Service Center's decision to deny the motion to reopen due to the petitioner's failure to establish its ability to pay was well founded. Notwithstanding, the petitioner filed a subsequent appeal with the AAO.

The AAO finds that the director properly adjudicated the motion to reopen pursuant to section 203(b)(3) of the Act. Since the director's decision was not in error, the petitioner is precluded from requesting an appeal with the AAO. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.