

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **APR 03 2012** Office: TEXAS SERVICE CENTER

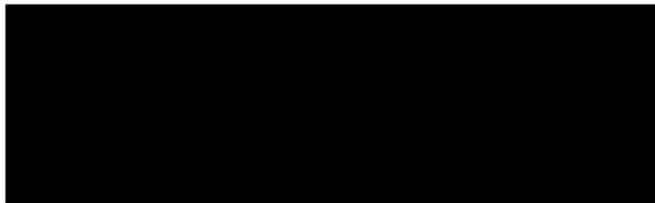


IN RE:



PETITION: Immigrant Petition for Alien Worker as a Professional or Skilled Worker pursuant to Section 203(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition as well as a subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a provider of physical and occupational therapy seeking to permanently employ the beneficiary in the United States as a market research analyst pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director denied the petition on April 22, 2008, based upon the determination that the petitioner failed to demonstrate that it had the continuing ability to pay the beneficiary the proffered wage since the priority date of the labor certification.

Counsel subsequently filed a motion to reopen and reconsider the matter on the petitioner's behalf on May 22, 2008, utilizing the Form I-290B, Notice of Appeal or Motion, on May 22, 2008. The director dismissed the motion to reopen and reconsider on April 28, 2009, based upon the determination that the petitioner had again failed to demonstrate that it had the continuing ability to pay the beneficiary the proffered wage since the priority date of the labor certification.

The petitioner subsequently attempted to file an appeal on June 1, 2009, using Form EOIR-29, Notice of Appeal to Board of Immigration Appeals from a Decision of an INS Officer, which was accompanied by a filing fee of \$110.00.

Title 8 C.F.R. § 103.2(a)(7)(i) requires that United States Citizenship and Immigration Services (USCIS) reject any petition or application filed with the incorrect filing fee. Likewise, 8 C.F.R. § 103.3(a)(2)(i) requires the affected party to file an appeal using Form I-290B. In this case, the petitioner filed an appeal using Form EOIR-29¹ and submitted the incorrect filing fee of \$110.² 8 C.F.R. § 103.3(a)(2)(i) clearly provides the proper filing instructions, including the place of filing and the proper form that must be used.

¹While counsel improperly filed the appeal using Form EOIR-29, it must be noted that the Board of Immigration Appeals does not have jurisdiction over this matter. *See* 8 C.F.R. § 1003.1(b). In the process of reorganizing the immigration regulations, the Department of Homeland Security (DHS) deleted the list of the AAO's appellate jurisdiction that was previously found at former 8 C.F.R. § 103.1(f)(3)(iii) (2002). 68 Fed. Reg. 10922 (March 6, 2003). DHS replaced the appellate jurisdiction provision with a general delegation of authority, granting U.S. Citizenship and Immigration Services (USCIS) the authority to adjudicate the appeals that had been previously listed in the regulations as of February 28, 2003. *See* DHS Delegation No. 0150.1 para. (2)(U) (Mar. 1, 2003); 8 C.F.R. § 103.3(a)(iv). As a result, there is no generally accessible list of the AAO's jurisdiction that may be cited in immigration proceedings or in federal court.

²The filing fee for an appeal to the AAO became \$585.00 on July 30, 2007. 72 Fed. Reg. 29851-29874 (May 30, 2007).

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The AAO does not have the discretion to consider an improperly filed appeal. Therefore, the appeal will be rejected based on its improper filing.

ORDER: The appeal is rejected.