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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**

B13

[Redacted]

DATE: **APR 20 2012** OFFICE: CALIFORNIA SERVICE CENTER [Redacted]

IN RE:

[Redacted]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

ON BEHALF OF PETITIONER:

[Redacted]

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, California Service Center, denied the employment-based nonimmigrant visa petition. The petitioner appealed the decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The petitioner has now filed another appeal. The AAO will reject the appeal.

On the cover page of its dismissal notice, dated December 29, 2011, the AAO stated: "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." The AAO did not state that the petitioner could file an appeal.

The Form I-290B Notice of Appeal or Motion includes, at Part 2, instructions to "Check the box below that best describes your request." The six boxes are labeled as follows:

- A. I am filing an appeal. My brief and/or additional evidence is attached.
- B. I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days.
- C. I am filing an appeal. No supplemental brief and/or additional evidence will be submitted.
- D. I am filing a motion to reopen a decision. My brief and/or additional evidence is attached.
- E. I am filing a motion to reconsider a decision. My brief is attached.
- F. I am filing a motion to reopen and a motion to reconsider a decision. My brief and/or additional evidence is attached.

The instructions to the Form I-290B state, on page 2: "You must clearly indicate if you are filing an appeal or a motion."

Counsel, on the petitioner's behalf, did not check box D, E or F, the boxes dealing with motions to reopen and/or reconsider. Instead, counsel checked box B, indicating that the petitioner was "filing an appeal" and would later submit a brief. Therefore, the petitioner has not filed a motion to reopen or reconsider the application.

The Secretary of the Department of Homeland Security (DHS) delegated the authority to adjudicate appeals to the AAO under the authority vested in the secretary 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 only over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception – petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement. The AAO does not have appellate jurisdiction over an appeal from one of its own decisions, and the regulations do not provide for appeals for AAO decisions.

The U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 103.5, cited on the cover page to the AAO decision, spell out the requirements for a motion to reopen and/or reconsider.

With respect to appeals, the USCIS regulation at 8 C.F.R. § 103.3(a)(2)(vi) allows the petitioner to submit a brief with Form I-290B, and the regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows the petitioner to request additional time to submit a brief. For motions, the USCIS regulation at 8 C.F.R. § 103.5(a)(1)(iii) states that “Form I-290B . . . may be accompanied by a brief,” but there is no provision to allow submission of a brief at a later time. For this reason, the options listed on Form I-290B refer to later supplements to an appeal, but not to a motion. Therefore, even if the regulations gave the AAO the discretion to treat an improperly filed appeal as a motion (which they do not do), the AAO would not be able to accept any subsequent brief.

Counsel, in an accompanying cover letter, stated: “In accordance with 8 CFR § 103.3(a)(2)(ii) and (iii), it is respectfully requested that this Appeal also be treated as a Motion to Reopen and Reconsider the denial of the visa petition.” The cited regulations allow such consideration under certain conditions, but the appeal must be properly filed in the first place. The regulations do not state that an appeal of an unappealable decision shall automatically receive consideration as a motion. That the regulations repeatedly distinguish and differentiate between an appeal and a motion is evidence enough that the two types of filings are not universally or automatically interchangeable.

Furthermore, the regulation at 8 C.F.R. § 292.4(a) requires the petitioner to submit a new Form G-28, Notice of Entry of Appearance as Attorney or Representative, when filing an appeal with the AAO. The instructions to Form I-290B reflect this requirement on page 2, stating: “Form G-28 . . . must be attached if [Form I-290B] is signed by a legal representative. . . . Your attorney or representative must submit Form G-28 with the appeal or motion. If the appeal or motion is filed by an attorney or representative without a properly executed Form G-28, it will be dismissed or rejected.” Neither the regulations nor the instructions to Form I-290B waive these requirements for attorneys or representative who had previously submitted Form G-28.

The appeal does not include Form G-28, and therefore, for this additional reason, the appeal was not properly filed. The USCIS regulations at 8 C.F.R. § 103.3 (a)(2)(v)(A)(2)(ii) and (iii) allow an attorney or representative to remedy the deficiency for “an otherwise properly filed appeal,” but, for reasons explained above, the filing is not an otherwise properly filed appeal.

For the above reasons, the AAO must reject the appeal.

ORDER: The appeal is rejected.