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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

b2

Date: JUL 26 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

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.

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, with a fee of $630. 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,

Michael T. Kelly

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the instant nonimmigrant visa petition. The petitioner appealed to the Administrative Appeals Office (AAO). That appeal was rejected as untimely filed. The matter is again before the AAO again on appeal. The appeal will be rejected.

On the Form I-129 visa petition, the petitioner stated that it is a software development and consulting firm. In order to employ the beneficiary in what it designates as a software engineer position, the petitioner seeks to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the beneficiary has been in H or L visa status for the full six years ordinarily permitted, and that the petitioner has not established that the beneficiary is entitled to an extension. The petitioner appealed that decision to the AAO. The AAO found that the appeal had been untimely filed, and rejected the appeal. The instant appeal was filed, on September 2, 2010, to contest that decision.

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, the appeal is not properly before the AAO. Therefore, as the appeal was not properly filed, it will be rejected pursuant to 8 C.F.R. §103.3(a)(2)(v)(A)(1).

Further, the body of the instant appeal states, in its entirety, "Additional documents evidencing eligibility for the classification requested for [sic] would be submitted to the [AAO] within the next thirty days." On that Form I-290B appeal, the petitioner also checked Box B in Part 2 indicating that a brief and/or additional evidence would be submitted within 30 days. No such evidence or argument was subsequently submitted. Counsel's statement on appeal contains no specific assignment of error.

Further still, the AAO notes that the petitioner had the option of filing a motion to reopen or a motion to reconsider the AAO's most recent decision within 33 days of service pursuant to 8 C.F.R. §103.5. However, 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 or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R. §§ 103.5(a)(2) and (3).

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part, "*Requirements for motion to reopen.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

The regulation at 8 C.F.R. § 103.5(a)(3) states:

> *Requirements for a motion to reconsider.* A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish

> that the decision was based on an incorrect application of law or [USCIS] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Even if the instant appeal had been filed as a motion, it would not have escaped dismissal. The instant appeal meets neither the requirements for a motion to reopen or a motion to reconsider. Even if presented as a motion, it would not meet the applicable requirements and would be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The appeal is rejected.