

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

(b)(6)

[Redacted]

DATE: **APR 10 2013**

OFFICE: TEXAS SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner:  
Beneficiary:

[Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents relating 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. On August 13, 2012, the petitioner, through counsel, filed a second appeal with the AAO. The appeal will be rejected.

The petitioner, who is also the beneficiary, seeks classification as an "alien of extraordinary ability" in the arts, as a scriptwriter and creative producer, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A).

On July 23, 2012, the AAO affirmed the director's December 20, 2010 adverse decision and dismissed the petitioner's appeal. In its decision, the AAO instructed the petitioner that if he believes the AAO applied the law inappropriately in reaching the decision, or if he has additional information that he wishes the AAO to consider, he "may file a motion to reconsider or a motion to reopen." Instead of filing a motion, on August 13, 2012, the petitioner, through counsel, filed a second Notice of Appeal or Motion, Form I-290B. On page 1 of the Form I-290B, counsel indicated that she is filing an appeal, and that her brief and/or additional evidence will be submitted to the AAO within 30 days. The AAO does not have jurisdiction over an appeal of its own decision.

The AAO's authority to adjudicate appeals is delegated by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him or her through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over matters described in the regulation at 8 C.F.R. § 103.1(f)(3)(iii) (2003). Accordingly, the petitioner's appeal is not properly within the AAO's jurisdiction.

In addition, it is clear from counsel's November 23, 2012 filing that the second Form I-290B was intended to be an appeal of the AAO's decision, rather than a motion to reconsider and/or reopen of the AAO's decision. Specifically, counsel's brief is entitled "Brief in Support of Appeal," and the brief makes no mention of a motion. Moreover, counsel's brief is substantially the same as her April 19, 2011 appellate brief challenging the director's adverse decision, and it fails to address issues raised in the AAO's July 23, 2012 decision.

Furthermore, counsel's second Form I-290B does not meet the applicable requirements for filing a motion. Specifically, a motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed; no provision exists for United States Citizenship and Immigration Services (USCIS) to grant an extension to the petitioner to file evidence or arguments in the future. The fact that counsel in part 2 of the second Form I-290B checked box B – "I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days" – does not allow her to submit a brief or evidence beyond the 30-day period allowed for a motion to reconsider or reopen. *See* 8 C.F.R. § 103.5(a)(1)(i).

In conclusion, the AAO does not have jurisdiction over the instant appeal, which is an appeal of the AAO's own decision. Accordingly, the appeal must be rejected, as it was not properly filed. *See* 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

**ORDER:** The appeal is rejected.