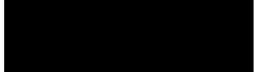


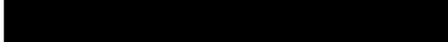
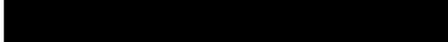


U.S. Citizenship  
and Immigration  
Services



B4

DATE: **NOV 08 2012** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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 preference visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO again on appeal. The appeal will be rejected.

The petitioner is a limited liability company organized in the State of Florida. It seeks to employ the beneficiary as its director of operations. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

On March 23, 2009, the director denied the petition based on the determination that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity. On January 10, 2011, the AAO dismissed the appeal, affirming the director's decision.

On February 10, 2011, counsel for the petitioner filed the instant appeal. On the Form I-290B, counsel indicated that he was filing an appeal by selecting "B" in Part 2: "I am filing an appeal. My brief and/or evidence will be submitted to the AAO within 60 days."<sup>1</sup>

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. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The AAO observes 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."

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<sup>1</sup> The AAO notes that counsel crossed out "30 days" and hand-wrote "60 days" in Part 2 of the appeal form. If an affected party desires more time to submit a brief, the party may submit a request directly to the AAO to show good cause for an extension. 8 C.F.R. § 103.3(a)(2)(vii). The record does not contain such a request. By itself, the hand-written alteration of the appeal form will not suffice.

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.

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

**ORDER:** The appeal is rejected.