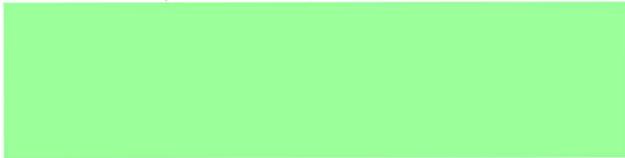




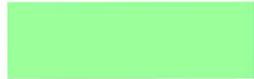
U.S. Citizenship
and Immigration
Services

(b)(6)

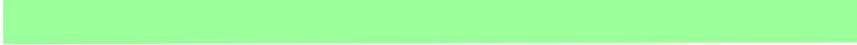


DATE: OCT 07 2013

OFFICE: TEXAS 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, issued a notice of intent to deny (NOID), and ultimately denied the nonimmigrant visa petition. The petitioner filed an appeal in response to the NOID, prior to the adjudication of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly filed.

The petitioner, a Texas corporation, operates a restaurant and seeks to employ the beneficiary as its Managing Director. 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 August 10, 2012, the director issued a NOID setting forth several discrepancies and deficiencies in the petitioner's evidence submitted in support of the Form I-140, Immigrant Petition for an Alien Worker. The director requested a response from the petitioner within thirty (30) days of the notice. On September 7, 2012, the petitioner submitted a memorandum and additional evidence in a timely fashion to the director endeavoring to address the issues raised in the NOID. Further, on September 11, 2012, the petitioner filed a Form I-290B, Notice of Appeal or Motion, indicating that it was filing an appeal. The petitioner stated in the appeal that it "intends to rebut the derogatory information stated in USCIS records, and responds [*sic*] to additional request for evidence." The petitioner included its response to the director's NOID from September 7, 2012 with the Form I-290B. The director later issued a decision denying the petition on April 30, 2013.¹

The pertinent regulation at 8 C.F.R. § 103.2(b)(8)(iii) states that USCIS may issue a NOID if the initial evidence submitted by the petitioner does not establish eligibility. USCIS must specify the type of evidence required and/or the bases of the proposed denial sufficient to give the petitioner adequate notice and sufficient information to respond, along with a deadline for response. *See* 8 C.F.R. § 103.2(b)(8). In response to a NOID, the petitioner may submit a complete response containing all requested information; submit a partial response and ask for a decision based on the record, or withdraw the petition. *See* 8 C.F.R. § 103.2(b)(11). The regulation does not allow a petitioner to file an appeal to the AAO in response to a NOID. Only unfavorable decisions on petitions may be appealed. 8 C.F.R. § 103.3(a)(1)(ii).

As of the date of the filing of the appeal, September 11, 2012, the petitioner had yet to receive an unfavorable decision from USCIS. A NOID is not an unfavorable decision, but a process through which USCIS may allow a petitioner to respond and submit additional evidence when USCIS finds initial evidence submitted in support of a petition insufficient to establish eligibility.

¹ The petitioner subsequently filed two motions to reconsider in response to the director's denial on April 30, 2013, one filed on May 30, 2013 and one filed on June 3, 2013. The official having jurisdiction over a motion to reconsider is the official who made the latest decision in the proceeding, in this case the Director of the Texas Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). At this time, both motions to reconsider are pending adjudication by the service center.

(b)(6)

NON-PRECEDENT DECISION

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As such, the AAO has no jurisdiction over the appeal since no unfavorable decision had been issued at the time of filing. 8 C.F.R. § 103.3(a)(1)(ii). Therefore, the appeal will be rejected as improperly filed.

ORDER: The appeal is rejected.