



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: NOV 12 2009

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IN RE:

Petitioner:

Beneficiary:

[REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

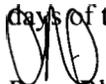
ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew

Chief, Administrative Appeals Office

CC:

[REDACTED]

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The petitioner appealed the director's decision and, on July 9, 2009, the Administrative Appeals Office (AAO) dismissed the appeal. The Motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(A) and 103.5(a)(4).

The petitioner provides health care support and testing services. It seeks to employ the beneficiary permanently in the United States as a computer programmer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(2). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly. The director also raised concerns regarding inconsistencies relating to when the beneficiary received his degree.

The petitioner appealed the director's decision. On February 19, 2009, the AAO issued a notice to the petitioner advising the petitioner of serious discrepancies between two of the beneficiary's transcripts and questioned how the beneficiary could have completed his foreign degree after arriving in the United States. In response, the petitioner submitted a letter, dated February 25, 2009, requesting that the appeal be withdrawn. In addition, counsel submitted a response from the beneficiary. On July 9, 2009, the AAO dismissed the appeal based on its withdrawal by the petitioner. In addition, the AAO invalidated the alien employment certification, finding that the beneficiary knowingly misrepresented his education on the alien employment certification.

A Motion to Reopen the AAO's decision was filed on July 28, 2009 on Form I-290B, Notice of Appeal of Motion. The Form I-290B was signed by [REDACTED] A Form G-28, Entry of Appearance as Attorney or Representative, was submitted in conjunction with the Form I-290B. The Form G-28 is signed by the beneficiary and by [REDACTED] U.S. Citizenship and Immigration Services regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B).

As the motion was not properly filed, it must be dismissed. 8 C.F.R. §§ 103.5(a)(1)(iii)(A) and 103.5(a)(4); *see also* 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

ORDER: The motion is dismissed as improperly filed.