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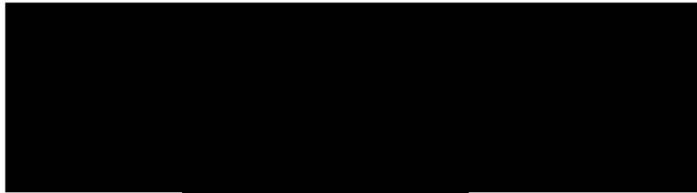
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER
SRC 07 800 22991

Date: **NOV 18 2009**

IN RE: Petitioner: [REDACTED]
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:



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

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a software development and consulting business. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition was electronically filed on July 26, 2007. However, the petitioner did not submit any required initial evidence within seven days, including an original certification by the Department of Labor as required by statute. The director denied the petition because of this missing initial documentation, including the missing original labor certification.

The AAO's appellate jurisdiction is set forth at 8 C.F.R. § 103.1(f)(3)(E)(iii) (2003) which provides for appellate jurisdiction over decisions on petitions for employment-based visa classifications or special immigrants or entrepreneurs pursuant to 8 C.F.R. §§ 204.5 and 204.6 except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act. In this matter, the petitioner was denied because of the lack of, *inter alia*, a labor certification entitling the petitioner to the benefit sought. Accordingly, as there is no appeal from such a denial, the AAO has no jurisdiction to issue a decision in this case and the appeal must be rejected.

However, as the petitioner submitted evidence on appeal, including a labor certification, this matter shall be remanded to the Texas Service Center to be considered as a motion to reopen and reconsider.

ORDER: The appeal is rejected. The matter is remanded to the Texas Service Center to be considered as a motion to reopen and reconsider.