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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

B5

FILE:

Office: NEBRASKA SERVICE CENTER

Date: JUL 08 2010

IN RE:

Petitioner:

Beneficiary:

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:

SELF-REPRESENTED

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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) rejected an appeal as improperly filed. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will dismiss the motion.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a research associate at the University of Cincinnati (Ohio) College of Medicine. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. The regulation at 8 C.F.R. § 103.5(a)(3) requires that 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 Service 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 record contains Form G-28, Notice of Entry of Appearance as Attorney or Representative, identifying one [REDACTED] of [REDACTED] New York, as the petitioner's attorney of record. On July 10, 2006, the petitioner filed the Form I-140 petition on his own behalf. Information on the Form I-140 indicated that [REDACTED] had prepared the petition. The director denied the petition on July 25, 2008. On August 25, 2008, an individual claiming to be [REDACTED] filed the Form I-290B Notice of Appeal.

The AAO wrote to the Flushing address to request copies of [REDACTED] credentials. The response to the request included information relating to Michael A.O. Brown, who is a licensed attorney, but who has never practiced from the Flushing address, and who denied any knowledge of any proceedings arising from that address. The AAO rejected the appeal on January 8, 2010, based on a finding that someone at the Flushing address was impersonating attorney [REDACTED]. The AAO cited the USCIS regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1), which states: An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded. Because neither the petitioner himself nor a qualified attorney or accredited representative filed the appeal, the AAO could not consider the appeal to have been properly filed.

On motion, the petitioner does not dispute the AAO's version of events. The petitioner submits a copy of a November 19, 2005 agreement between himself and one [REDACTED], in which the petitioner engaged Mr. [REDACTED] as a "Consultant to file an application for EB-2 Priority Worker Immigrant Status."

The agreement does not indicate that Mr. [REDACTED] would engage an attorney on the petitioner's behalf. The petitioner claims that Mr. [REDACTED] simply presented him with documents, allegedly from "[REDACTED]" and told the petitioner that Mr. [REDACTED] was the petitioner's attorney.

The petitioner's submission does not meet the requirements of a motion to reopen or reconsider set forth in the regulations at 8 C.F.R. §§ 103.5(a)(2) and (3). The AAO's rejection of the appeal rested on evidence that an individual impersonating attorney Michael Brown filed the appeal. The petitioner has not contested, much less overcome, that finding. The petitioner has not shown that the AAO made any error by rejecting the appeal. The petitioner asserts that [REDACTED] deceived him, thereby depriving him of the opportunity to file a proper appeal, but this does not change [REDACTED]' improper filing of the appeal.

The AAO has reported this matter to USCIS Disciplinary Counsel. The Attorney Grievance Committees of the New York State Unified Court System state: "If you believe that someone is engaged in the unauthorized practice of law in New York, this information may be reported to your local District Attorney's office."¹ The Queens County District Attorney has jurisdiction over Flushing; the web address for that office is <http://www.queensda.org/index2.html>.

There is, however, no remedy available, with respect to this petition proceeding, for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1.

ORDER: The motion is dismissed.

¹ Source: <http://www.courts.state.ny.us/ip/attorneygrievance/unauthorizedpractice.shtml> (printout added to record June 29, 2010)