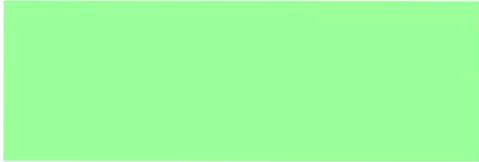


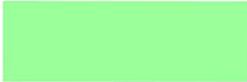


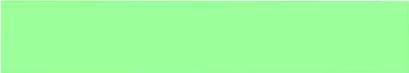
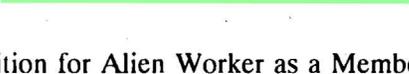
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **FEB 12 2013**

OFFICE: TEXAS SERVICE CENTER FILE: 

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:



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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based preference visa petition on February 17, 2009. The petitioner appealed the decision to the Administrative Appeals Office (AAO) on March 19, 2009. The AAO dismissed the appeal on February 28, 2012. The petitioner filed a subsequent appeal with the AAO on April 3, 2012. The petitioner's April 3, 2012 appeal will be rejected.

The petitioner is a physical medicine and rehabilitation business. It seeks to employ the beneficiary permanently in the United States as an acupuncturist 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, an alien employment certification, which the Department of Labor (DOL) approved, accompanied the petition.

In his February 17, 2009 decision, the director determined that the petitioner had failed to establish its ability to pay the beneficiary the proffered salary from the priority date onwards. The AAO dismissed the petitioner's appeal on February 28, 2012. The cover page of the AAO's decision instructed the petitioner that it may file either a motion to reopen or a motion to reconsider the decision pursuant to the requirements found at 8 C.F.R. § 103.5, and that any motion must be filed with the office that originally decided the case 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).

Counsel subsequently attempted to file another appeal on the petitioner's behalf on April 3, 2012. The AAO, however, does not exercise appellate jurisdiction over its own decisions. The AAO only exercises appellate jurisdiction over matters that were specifically listed at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). For instance, in the event that a petitioner disagrees with an AAO decision, the petitioner can file a motion to reopen or a motion to reconsider in accordance with 8 C.F.R. § 103.5. In this matter, the petitioner did not check box D ("I am filing a motion to reopen a decision"), box E ("I am filing a motion to reconsider a decision"), or box F ("I am filing a motion to reopen and a motion to reconsider a decision") on the Form I-290B, Notice of Appeal or Motion. While counsel indicated that he was filing a motion to reopen or in the alternative a motion to reconsider in his appellate statement, counsel checked box A ("I am filing an appeal. My brief and/or additional evidence is attached"), instead. Therefore, the appeal is improperly filed and must be rejected on this basis pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

Therefore, as the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

ORDER: The appeal is rejected. The AAO's previous decision dated February 28, 2012 shall not be disturbed. The petition remains denied.