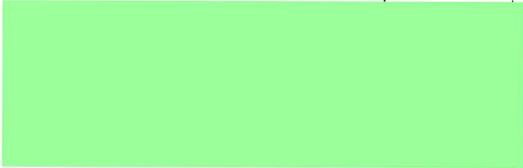




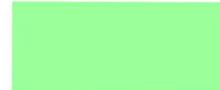
U.S. Citizenship
and Immigration
Services

(b)(6)

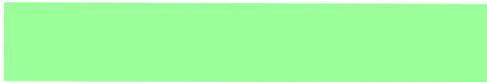


Date: **JAN 28 2013** Office: TEXAS SERVICE CENTER

FILE:

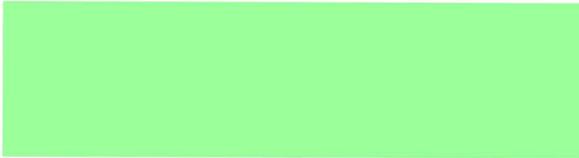


IN RE: Petitioner:
 Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Professional 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: On June 13, 2012, the Administrative Appeals Office (AAO) dismissed an appeal to the denial of an employment-based preference visa petition by the Director, Texas Service Center. The matter is now before the AAO again on appeal. The appeal will be rejected.

The petitioner is a church. It seeks to classify the beneficiary as a radio minister 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. As required by statute, the petition was filed with an ETA Form 9089, Application for Permanent Employment Application, approved by the Department of Labor (DOL). The director determined that the ETA Form 9089 failed to demonstrate that the job requires a professional holding an advanced degree or the equivalent of an alien of exceptional ability and, therefore, the beneficiary cannot be found qualified for classification as a member of the professions holding an advanced degree or an alien of exceptional ability. 8 C.F.R. § 204.5(k)(4). The director denied the petition accordingly.

Counsel subsequently filed a timely appeal on the petitioner's behalf on March 1, 2010. The AAO upheld the director's determination that the ETA Form 9089 failed to demonstrate that the job requires a professional holding an advanced degree or the equivalent of an alien of exceptional ability and, therefore, the beneficiary cannot be found qualified for classification as a member of the professions holding an advanced degree or an alien of exceptional ability and dismissed the appeal on June 13, 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).

The petitioner subsequently attempted to file another appeal on July 9, 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).¹ 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. In this case, the petitioner checked box A ("I am filing an appeal"), 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)(1).

¹ In the process of reorganizing the immigration regulations, the Department of Homeland Security (DHS) deleted the list of the AAO's appellate jurisdiction that was previously found at former 8 C.F.R. § 103.1(f)(3)(iii) (2002). 68 FR 10922 (March 6, 2003). DHS replaced the appellate jurisdiction provision with a general delegation of authority, granting U.S. Citizenship and Immigration Services (USCIS) the authority to adjudicate the appeals that had been previously listed in the regulations as of February 28, 2003. See DHS Delegation No. 0150.1 para. (2)(U) (Mar. 1, 2003); 8 C.F.R. § 103.3(a)(iv). As a result, there is no generally accessible list of the AAO's jurisdiction that may be cited in immigration proceedings or in federal court.

Therefore, as the appeal was not properly filed, it will be rejected.²

ORDER: The appeal is rejected. The AAO's previous decision dated June 13, 2012 shall not be disturbed.

² It is noted that, if the AAO were to consider the appeal to be a motion to reopen or reconsider, it would dismiss the motion for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4). The motion does not contain any new facts supported by affidavits or documentary evidence, and it thus does not meet the requirements of a motion to reopen. 8 C.F.R. § 103.5(a)(2). Likewise, the motion is not supported by pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or policy, and it thus does not meet the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(3).