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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

DATE: **SEP 29 2014** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

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)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on July 13, 2011. The Administrative Appeals Office (AAO) rejected the petitioner's appeal of that decision on January 11, 2013. The director dismissed the petitioner's motion to reopen on July 30, 2013. The matter is before the AAO again on appeal. The appeal will be summarily dismissed.

The petitioner seeks to employ the beneficiary permanently in the United States as a physical therapist, pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition is for a Schedule A, Group I occupation. The U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified, and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in Schedule A occupations. 20 C.F.R. § 656.5. Only professional nurses and physical therapists are on the current list of Schedule A, Group I occupations. 20 C.F.R. § 656.5(a).

Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089, Application for Alien Employment Certification, from DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with an uncertified ETA Form 9089, in duplicate. 8 C.F.R. §§ 204.5(a)(2) and (k)(4); *see also* 20 C.F.R. § 656.15.

The director concluded that the beneficiary's four year Bachelor of Physiotherapy degree, which included a six month full-time clinical internship, did not meet the "minimum requirements as stated on the individual labor certification as of the priority date" and, thus, "is ineligible for classification as a member of the professions holding an advanced degree." We also note that, upon review of the beneficiary's education documents, the evaluation from the Foreign Credentialing Commission on [REDACTED] included College Level Examination Program credits received by the beneficiary years after completion of the Bachelor of Physiotherapy program and states that the beneficiary "satisfies the total number of credits (120) required for a U.S. baccalaureate degree."

The director's original decision properly notified the petitioner that an appeal must be filed within 30 days of service. 8 C.F.R. § 103.3(a)(2)(i). If the unfavorable decision was mailed, the appeal must be filed within 33 days. 8 C.F.R. § 103.8(b). The filing date is the actual date of receipt at the location designated for filing. 8 C.F.R. § 103.2(a)(7)(i). As the appeal was untimely, we rejected it as improperly filed. Neither the Immigration and Nationality Act (the Act) nor the pertinent regulations grant the AAO authority to extend the time limit to file an appeal. *See Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006).

The director issued a decision dismissing the motion without addressing the lateness of the original appeal. Instead, the director found that "[t]he evidence submitted with the motion to reopen does not establish that the requirements for filing a motion to reopen have been met." The decision further stated that "[t]he petitioner submitted duplicative evidence that is already contained in the record and

presents no new evidence to show that the denial of the petition was an incorrect application of law or USCIS policy.”

On appeal, the petitioner indicates on Form I-290B, Notice of Appeal or Motion, and in its brief that it is appealing the director’s most recent decision and the original July 13, 2011 decision. USCIS is statutorily prohibited from providing a petitioner with multiple appeals on a single Form I-290B with a single fee. Pursuant to section 286(m) of the Act, 8 U.S.C. § 1356, USCIS is required to recover the full cost of adjudication. In addition to the statutory requirement, Office of Management and Budget (OMB) Circular A-25 requires that USCIS recover all direct and indirect costs of providing a good, resource, or service.¹ If the petitioner seeks more than one appeal, then it must file an additional Form I-290B with the accompanying fee. As both an appeal of the original decision and any newly filed appeal of the original decision would be rejected as late pursuant to 8 C.F.R. § 103.8(b), we will consider the appeal limited to the director’s most recent decision.

As previously stated, the director dismissed the petitioner’s motion for failing to meet the requirements of a motion to reopen. On appeal, the petitioner’s brief reiterates previous claims regarding the petitioner’s eligibility for the classification. The petitioner makes no attempt to address the director’s finding that the filing did not meet the regulatory requirements for a motion to reopen.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that “[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.” In this matter, the petitioner has not identified as a proper basis for the appeal an erroneous conclusion of law or a statement of fact in the director’s most recent decision.

As the petitioner did not contest any of the specific findings of the director and offers no substantive basis for the filing of the appeal, the appeal must be summarily dismissed.

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.

¹ See <http://www.whitehouse.gov/omb/circulars/a025/a025.html>, accessed on September 4, 2014, and incorporated into the record of proceeding.