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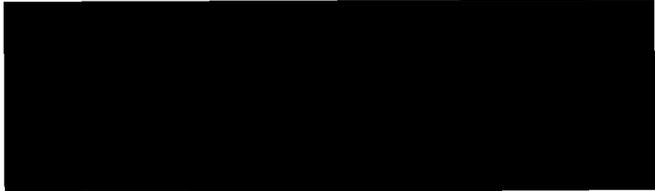
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

LIN-07-026-52867

Office: NEBRASKA SERVICE CENTER

Date: **MAR 15 2010**

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 concerning your case 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, Nebraska Service Center, denied the immigrant visa petition. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on appeal. The appeal will be rejected as improperly filed.

The petitioner is a residential care facility. It seeks to employ the beneficiary permanently in the United States as a caregiver. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor. The director determined that the petitioner had failed to establish that it offers a bona fide job opportunity and denied the petition accordingly. On May 27, 2008, the petitioner through counsel filed an appeal properly and timely. Upon a complete and careful review and examination of all documents submitted in the record including evidence submitted on appeal, the AAO concurred with the director's denial ground and also found an additional ground of ineligibility in that the petitioner failed to establish its continuing ability to pay the beneficiary the proffered wage beginning on the priority date to the present. The AAO dismissed the appeal accordingly.

A Form I-290B, Notice of Appeal or Motion, was filed by counsel on December 1, 2009. On Part 2 of the form, counsel indicates that she is filing an appeal for I-140 Lin-07-026-52867 denied on November 2, 2009 by U.S. Citizenship and Immigration Services (USCIS) Office in Washington DC. The record shows that an appeal from the denial of the petition by the director on April 30, 2008 has been dismissed by the AAO. While the AAO decision provides instructions on filing motion to reopen or reconsider an AAO's decision under 8 C.F.R. § 103.5, regulation does not delegate the AAO appellate jurisdiction to its own decisions. The decision made by the AAO cannot be appealed to the AAO. The instant appeal is improperly filed and therefore, must be rejected.

ORDER: The appeal is rejected as improperly timely filed.