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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

B6

[redacted]

Date: AUG 23 2011 Office: NEBRASKA SERVICE CENTER FILE: [redacted]
LIN 07 120 54473

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION**: On October 9, 2009, the Administrative Appeals Office (AAO) dismissed an appeal to the denial of an employment-based preference visa petition by the Director, Nebraska Service Center (CSC). The matter is now before the AAO again on appeal. The appeal will be rejected, or in the alternative, will be dismissed.

The petitioner is a multi-specialty medical practice seeking to permanently employ the beneficiary in the United States as an accountant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director denied the petition on April 17, 2009, based upon the determination that the petitioner had failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification.

The petitioner subsequently filed a timely appeal on May 19, 2009.

On October 9, 2009, AAO dismissed the petitioner's appeal upholding the director's decision to deny the petition. The reasons for the dismissal of the appeal are set forth in the AAO's decision.

The petitioner subsequently attempted to file another appeal on November 9, 2009, indicating that a brief and/or additional evidence would be forthcoming within 30 days. 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 to dismiss an appeal, 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 AAO would have had jurisdiction over a timely motion if the petitioner had checked 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, counsel, on the petitioner's behalf, checked box B ("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*).

In addition, even if the AAO were to treat the appeal as a motion, it would be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4). Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. Pursuant to 8 C.F.R. § 103.5(a)(3), a motion to reconsider

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[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.

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 USCIS policy. As noted above, counsel stated that a brief and/or additional evidence would be submitted in 30 days. Over thirty days have passed, and no brief and/or evidence has been submitted or received. Even if a brief and/or evidence had been submitted, it could not have been considered in the context of a motion. Evidence and briefs must be submitted with the motion. Unlike appeals, the regulation pertaining to motions to reopen or reconsider does not permit briefs and/or evidence to be filed subsequently. Accordingly, as the filing does not meet the requirements of 8 C.F.R. §§ 103.5(a)(2) or (3), it would have been dismissed pursuant to 8 C.F.R. § 103.5(a)(4), if it were treated as a motion.

Therefore, as the appeal was not properly filed, it will be rejected, or in the alternative, if a motion, dismissed for failing to meet applicable requirements.

**ORDER:** The appeal is rejected. The AAO's previous decision dated October 9, 2009 shall not be disturbed.