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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

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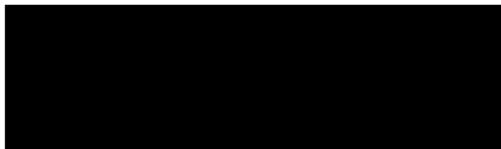
DATE: JUL 27 2011 Office: TEXAS SERVICE CENTER

FILE:

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:

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition on July 29, 2008. On August 27, 2008, the petitioner filed Form I-290B, Notice of Appeal or Motion (Form I-290B) with the service center, which the director forwarded to the Administrative Appeals Office (AAO). On September 24, 2009, the AAO adjudicated the Form I-290B as an appeal and summarily dismissed it.

On October 23, 2009, the petitioner filed a second Form I-290B as a motion to reopen or reconsider the AAO's September 24, 2009 decision. On March 3, 2011, the AAO issued a request for evidence (RFE) in connection with the October 23, 2009 motion to reopen or reconsider.

Now it comes to the AAO's attention that the AAO lacked jurisdiction to adjudicate the August 27, 2008 Form I-290B. As a result, the AAO must withdraw its September 24, 2009 decision along with any action taken to adjudicate the October 23, 2009 Form I-290B, including the March 3, 2011 RFE and return this matter to the director for adjudication based on the motion to reopen filed on August 27, 2008.

The petitioner is a household, and seeks to employ the beneficiary permanently in the United States as a housekeeper pursuant to section 203(b)(3) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1153(b)(3), as an unskilled worker. As required by statute, the petition is accompanied by a Form ETA 9089, Application for Permanent Employment Certification, approved by the Department of Labor. The director determined that the petitioner failed to submit required initial evidence to support the immigrant petition and denied the petition accordingly on July 29, 2008.

The petitioner timely filed Form I-290B on August 27, 2008 with the service center. Box F on the Form I-290B indicates that the petitioner intended to file a motion to reopen and reconsider the service center's decision. The filing does not indicate that the petitioner intended to file an appeal with the AAO. The record shows that the petitioner filed a motion to reopen or reconsider the director's July 29, 2008 decision. The regulation at 8 C.F.R. § 103.5(a)(1)(ii) clearly provides that the official having jurisdiction over a motion to reopen or reconsider is the official who made the last decision in the proceeding. As the Texas Service Center rendered the last decision, the AAO lacked jurisdiction to adjudicate the August 27, 2008 Form I-290B because it was not the last official who made the decision. Furthermore, as the AAO never obtained jurisdiction over this matter, all subsequent AAO actions were in error.

The petitioner properly filed the motion to reopen and reconsider in accordance with the regulation at 8 C.F.R. §103.5 on August 27, 2008. The director erroneously annotated the motion as an appeal and forwarded the matter to the AAO. The AAO erroneously adjudicated the motion as an appeal. In order to correct the procedural missteps in this matter, the AAO withdraws its decision dated September 24, 2009 and the subsequently issued RFE. The AAO returns this matter to the director, who has retained jurisdiction throughout these proceedings, to adjudicate the motion to reopen or reconsider filed on August 27, 2008 based on all evidence in the record of proceeding.

ORDER: The AAO's decision dated September 24, 2009 and RFE dated March 3, 2011 are withdrawn and the matter is returned to the director for further processing.