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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

Date:

Office: TEXAS SERVICE CENTER

FILE: 

JUN 08 2011

IN RE:

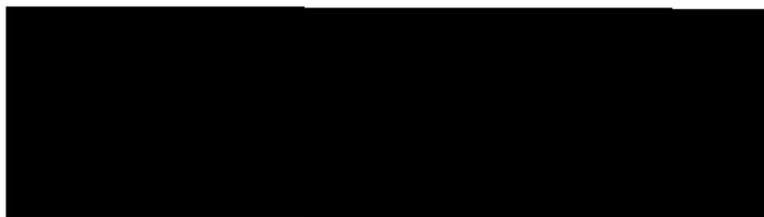
Petitioner:

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.

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 January 28, 2009, the Administrative Appeals Office (AAO) dismissed an appeal to and affirmed the certified denial of an employment-based preference visa petition by the Director, Texas Service Center (TSC). A subsequent motion to reopen the matter was granted by the AAO on January 26, 2011, with the AAO issuing a decision affirming the certified denial of the petition and the dismissal of the appeal to that decision. The matter is now before the AAO again on appeal. The appeal will be rejected.

The petitioner is an import/export business. It seeks to employ the beneficiary permanently in the United States as an order clerk. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). As set forth in the director's certified decision issued on June 16, 2008, the director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly and certified this decision to the AAO. The AAO affirmed the director's decision and dismissed the appeal to that decision on January 28, 2009, noting that the petitioner had not established its ability to pay the proffered wage as of the priority date.

The AAO subsequently granted the petitioner's motion to reopen the matter and issued a decision upholding the director's certified denial of the petition and affirming its own previous dismissal of the appeal on January 26, 2011. The reasons for these actions are set forth in the AAO's decision.

The petitioner subsequently attempted to file another appeal on February 24, 2011, indicating that a brief and/or additional evidence would be forthcoming within 30 days. A brief and supporting documentation were subsequently submitted to the AAO on March 23, 2011. 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). 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, the petitioner 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)(I).

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

ORDER: The appeal is rejected. The AAO's previous decision dated January 26, 2011 shall not be disturbed.