

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



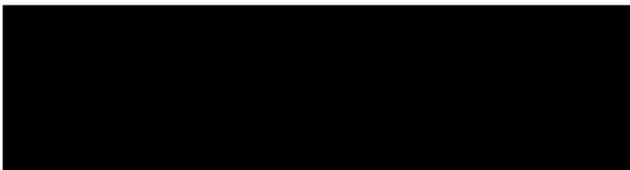
DATE: **APR 09 2012** OFFICE: TEXAS SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

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:



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: The employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director) on June 1, 2011. The petitioner filed both a motion to reopen and reconsider and an appeal on July 1, 2011. The Chief, Administrative Appeals Office (AAO) will dismiss the motion to reopen and reconsider as moot.

The petitioner is a wholesale jewelry importer. It seeks to employ the beneficiary permanently in the United States as a general manager pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL), accompanied the petition.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The Director denied the petition for lack of a valid labor certification after finding that the petitioner failed to disclose during the labor certification process with the DOL that it is wholly owned by the beneficiary, which undermined the petitioner's claim that there was a *bona fide* job opportunity and warranted the invalidation of the labor certification.

Simultaneously with an appeal (receipt number [REDACTED]) the petitioner filed a motion to reopen and reconsider (receipt number [REDACTED]). The regulations do not provide any procedure by which a petitioner may file an appeal and, at the same time, a separate motion to reopen or reconsider. The regulation at 8 C.F.R. § 103.5(a)(1)(ii) states that jurisdiction over a motion generally rests with the official who made the latest decision in the proceeding – in this case, the Director, Texas Service Center. For appeals, the regulations at 8 C.F.R. § 103.3(a)(2)(ii), (iii), and (iv) permit the Director to review and treat an appeal as a motion under certain circumstances. In this instance, the Director declined to treat the appeal as a motion and forwarded the appeal to the AAO. The appeal is under the jurisdiction of the AAO, pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

The Secretary of the Department of Homeland Security (DHS) delegated the authority to adjudicate appeals to the AAO under the authority vested in the Secretary through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction only over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception – petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement (ICE). The AAO's authority over the service centers is comparable to the relationship between a U.S. Court of Appeals and a U.S. District Court. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 *3 (E.D. La. March 15, 2000). Thus, service center decisions do not bind the AAO. *Id.*

Once the petitioner filed the appeal and the Director declined to treat the appeal as a motion, the Director lost jurisdiction. The jurisdiction for any subsequent action rests with the AAO. *See Baca-Prieto v. INS*, 1992 WL 245550 * 2 (N.D. Ill. Sept. 18, 1992) (where alien filed an appeal to the Board of Immigration Appeals (BIA) simultaneous with a motion for a stay of deportation, court found Immigration Judge (IJ) lost jurisdiction over the original motion and consequently lost jurisdiction to consider the stay request); *See Matter of Aviles*, 15 I&N Dec. 588 (BIA 1976); *Matter of Mintah*, 15 I&N Dec. 540 at 541 (BIA 1975) (a district director loses jurisdiction over a case once an appeal from his decision is filed). Under these circumstances, if the Director were to issue a decision on the motion it would have no effect and would result in administrative confusion and inefficiencies. *See Matter of Mintah*, 15 I&N Dec. at 541; *see also Puc-Ruiz v. Holder*, 629 F.3d 771 at 782 (8th Circ. 2010 (an IJ is divested of jurisdiction over a removal case once the alien files a notice of appeal with the BIA; the IJ's subsequent decisions are nullities). The adjudication of the petition must follow a single uninterrupted thread; it cannot branch off into two simultaneous and possibly conflicting proceedings. Similarly, jurisdiction cannot rest in two separate authorities at the same time.

For all of these reasons, the filing of the appeal and its forwarding to the AAO terminated the Director's jurisdiction. The petitioner's motion is hereby dismissed as moot. The materials submitted on motion will remain part of the record. The AAO will issue a separate decision on the appeal.

ORDER: The motion to reopen and reconsider is dismissed as moot.