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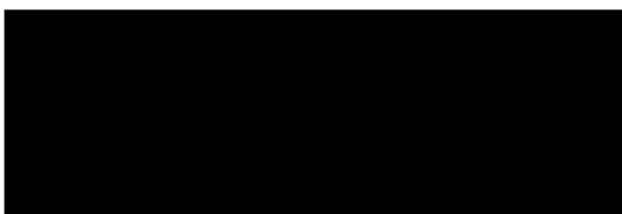
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



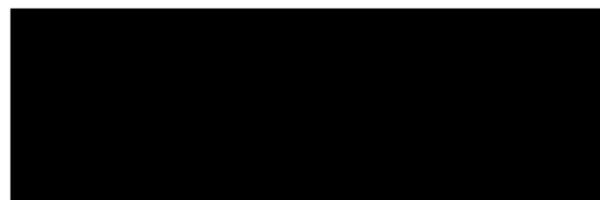
U.S. Citizenship
and Immigration
Services

BE



Date: Office: TEXAS SERVICE CENTER

APR 25 2012



IN RE:



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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: On September 22, 2009, the Administrative Appeals Office (AAO) summarily dismissed an appeal to the denial of an employment-based preference visa petition by the Director, Texas Service Center (TSC). The matter is now before the AAO again on appeal. The appeal will be rejected.

The petitioner is a law office and is seeking to permanently employ the beneficiary in the United States as an office manager 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 a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner failed to establish that it had the continuing ability to pay the beneficiary the proffered wage since the priority date of the labor certification.¹ The director denied the petition accordingly on March 12, 2008.

The petitioner subsequently filed a timely appeal on April 10, 2008. The petitioner stated that the director erred in denying the petition and that its tax returns established its continuing ability to pay the proffered wage. The petitioner requested an additional 30 days in which to submit a brief and/or additional evidence.

On September 22, 2009, the AAO summarily dismissed the petitioner's appeal noting that pursuant to 8 C.F.R. § 103.3(a)(2)(vii) and (viii), an affected party shall submit the brief directly to the AAO. The AAO stated that the petitioner's brief and/or additional evidence was due by May 13, 2008, and that sixteen months later, the AAO has received nothing further from the petitioner. Therefore, the AAO summarily dismissed the appeal as the petitioner failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal as required by 8 C.F.R. § 103.3(a)(1)(v).

The petitioner subsequently attempted to file another appeal on October 22, 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).² 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

¹ Additionally, the petitioner failed to provide sufficient evidence that the beneficiary had the two years of experience required as an office manager by the approved labor certification, or properly submit Part B of the ETA 750 for the substituted beneficiary.

² 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 Fed. Reg. 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.

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’s 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).

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

ORDER: The appeal is rejected. The AAO's previous decision dated September 22, 2009 shall not be disturbed.