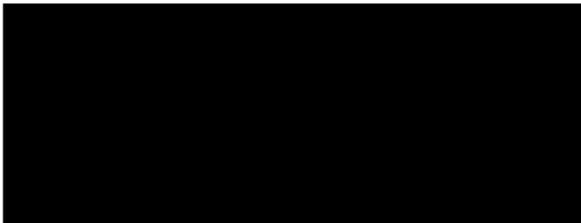


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B6

Date: **APR 27 2012** Office: TEXAS SERVICE CENTER



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 April 27, 2010, the Administrative Appeals Office (AAO) rejected 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 provider of personal consulting and sales services and is seeking to permanently employ the beneficiary in the United States as a sales manager assistant 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 determined that the petitioner failed to submit sufficient evidence to demonstrate that it had the continuing ability to pay the beneficiary the proffered wage since the priority date of the labor certification. The director denied the petition accordingly on April 17, 2009.

The beneficiary subsequently filed an untimely appeal on June 8, 2009.

On June 22, 2010, the AAO rejected the appeal as the beneficiary was not an affected party with standing to file an appeal in the instant case. The AAO noted in rejecting the appeal that the regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) permits an “affected party” to “be represented by an attorney or representative” but specifically states that the affected party “does not include the beneficiary of a visa petition.”

The beneficiary subsequently attempted to file another appeal on February 28, 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).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, the beneficiary checked box A (“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).

In addition, the appeal filed by the beneficiary on February 28, 2011 was untimely filed. In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or

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 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.

the attorney or representative of record must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

As noted previously, the record reflects that the AAO issued its decision in this matter on June 22, 2010 (and reissued the decision on October 20, 2010). It is noted that the AAO properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Immigration and Nationality Act (the Act) nor the pertinent regulations grant the AAO authority to extend this time limit.

The Form I-290B appeal was not received until February 28, 2011, or more than 33 days after the latest date the decision was issued. Accordingly, the appeal was untimely filed and must be rejected for this additional reason.

Finally, the Form I-290B appeal received on February 28, 2011, was signed by the beneficiary. As noted previously, United States Citizenship and Immigration Services' (USCIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B).

As the appeal was not properly filed, it will be rejected for this additional reason as well. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The appeal will be rejected for the above stated reasons, with each considered as an independent and alternative basis for rejection.

ORDER: The appeal is rejected. The AAO's previous decision dated June 22, 2010 shall not be disturbed.