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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



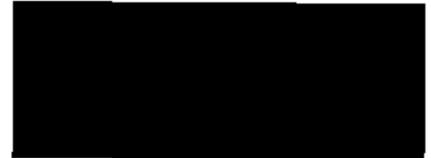
**U.S. Citizenship
and Immigration
Services**



B6

Date: **JUN 07 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: The preference visa petition was denied by the Director, Texas Service Center. The petitioner appealed to the Administrative Appeals Office (AAO), which rejected the appeal as untimely on July 16, 2009. The petitioner filed a second appeal. The appeal will be rejected.

The petitioner is an information technology consulting company. It seeks to employ the beneficiary permanently in the United States as a network security engineer. 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 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.

The petitioner subsequently filed an appeal on January 3, 2008.

On July 16, 2009, AAO rejected the petitioner's appeal. The reasons for the rejection of the appeal are set forth in the AAO's decision.

The petitioner subsequently attempted to file another appeal on August 18, 2009. 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, 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, counsel, on the petitioner's behalf, 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).

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

ORDER: The appeal is rejected. The AAO's previous decision dated July 16, 2009 shall not be disturbed.

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 FR 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.