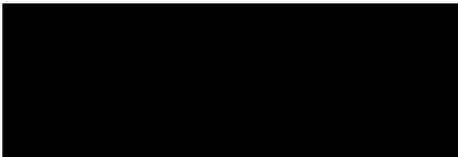


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B6

Date: Office: NEBRASKA SERVICE CENTER

FILE: 

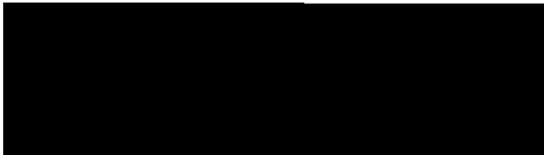
NOV 19 2012

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.

Thank you.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: On August 26, 2009, the Administrative Appeals Office (AAO) summarily dismissed an appeal to the denial of an employment-based preference visa petition by the Director, Nebraska Service Center (NSC). The matter is now before the AAO again on appeal. The appeal will be rejected.

The petitioner is a grocery wholesaler and is seeking to permanently employ the beneficiary in the United States as a stock supervisor pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). The petition was accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL) as required by section 212(a)(5)(A) of the Act. The director determined that the petitioner failed to establish that the beneficiary met the educational and experience requirements of the labor certification. The director denied the petition accordingly.

Counsel subsequently filed a timely appeal on September 27, 2007, and indicated that a brief and/or additional would be forthcoming within 30 days. However, counsel subsequently submitted a brief on November 28, 2007, 64 days after the appeal had been filed. The AAO summarily dismissed the appeal on August 26, 2009, finding that counsel did not specifically address the reasons stated for the denial on the timely-filed appeal and had not submitted his appellate brief in a timely manner. The cover page of the AAO's decision instructed the petitioner that it may file either a motion to reopen or a motion to reconsider the decision pursuant to the requirements found at 8 C.F.R. § 103.5, and that any motion must be filed with the office that originally decided the case within 30 days of the decision that the motion seeks to reconsider or reopen as required by 8 C.F.R. § 103.5(a)(1)(i).

Counsel subsequently attempted to file another appeal on the petitioner's behalf on September 21, 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). 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 petitioner did not check 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. The record shows that counsel filed the Form I-290B as an appeal by checking the box at part 2.A., of the Form I-290B, which specifically states "I am filing an appeal. My brief and/or additional evidence is attached." 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 August 26, 2009 shall not be disturbed.