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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 18 2013 OFFICE: NEBRASKA 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.

Thank you,

for
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: On August 10, 2012, the Administrative Appeals Office (AAO) 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 building maintenance company and is seeking to permanently employ the beneficiary in the United States as a janitorial services foreman 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 the continuing ability to pay the proffered wage to the beneficiary since the priority date. The director denied the petition accordingly.

The petitioner subsequently filed a timely appeal on March 20, 2009. The AAO upheld the director's decision and determined that the petitioner did not establish its continuing ability to pay the proffered wage to the beneficiary since the priority date, specifically in 2006 and 2007. The AAO also found that the petitioner failed to establish that the beneficiary met the experience requirements of the labor certification as of the priority date and dismissed the appeal on August 10, 2012. 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 13, 2012.[1] 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, the petitioner can file a motion to reopen or a motion to reconsider

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[1] The AAO notes that the signatures of the petitioner's president, , on the G-28 dated September 12, 2012, the G-28 dated March 15, 2009, the I-140 Petition, and the Form ETA 750, are visibly different from the petitioner's president's signature on the experience letter dated July 6, 2007. The signatures on all of the above-referenced documents are also different from each other. This issue must be resolved in any future filings.

[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 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.

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. Instead, counsel checked box A ("I am filing an appeal. My brief and/or additional evidence is attached").[3] 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*).

In the alternative, the appeal must be rejected because it has been 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 the attorney or representative of record must submit 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 submission, but the date of actual receipt with the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i).

As noted above, the AAO dismissed the petitioner's initial appeal on August 10, 2012, and gave proper notice to the petitioner that any motion must be filed 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).

The Form I-290B, Notice of Appeal or Motion, was received by the service center on Thursday, September 13, 2012, or 34 days after the decision was issued. Accordingly, the appeal was untimely filed. It is noted that even if counsel had properly filed the Form I-290B as either a motion to reopen or motion to reconsider on the petitioner's behalf, such motion would also be dismissed as untimely filed pursuant to 8 C.F.R. § 103.5(a)(1)(i).

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

ORDER: The appeal is rejected. The AAO's previous decision dated August 10, 2012 shall not be disturbed. The petition remains denied.

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[3] With the appeal, counsel submits copies of evidence already submitted and part of the record, as well as copies of checks issued to the beneficiary by the petitioner in August 2012.