

(b)(6)

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

DATE: **AUG 23 2013** OFFICE: NEBRASKA SERVICE CENTER

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The beneficiary appealed the decision to the Administrative Appeals Office (AAO). The AAO rejected the appeal as not filed by the affected party. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.¹

The filing date is the actual date of receipt at the location designated for filing. On motion, counsel merely stated that the director made an erroneous factual determination. Counsel dated the motion January 18, 2013. As of this date, more than six months later, the AAO has received nothing further, and the regulation requires that any brief shall be submitted directly to the AAO. 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii).

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Additionally, the regulation at 8 C.F.R. § 103.5(a)(3) states that a motion to reconsider must list the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. The record shows that the motion is not accompanied by affidavits or other documentary evidence and does not establish that the decision was incorrect based on the evidence of record at the time of filing. Thus, the motion is dismissed.

Public records indicate that the petitioning organization was dissolved by the state of Arizona on December 17, 2012.² The motion is filed by "[REDACTED]". However, no evidence of record connects [REDACTED] to the petitioner or demonstrated that [REDACTED] is the petitioner's successor in interest. Thus, the motion has not been filed by an affected party. For this additional reason the motion must be dismissed.

¹ 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. While counsel indicated that he was filing a motion to reopen or in the alternative a motion to reconsider in his appellate statement, counsel checked box B ("I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days"), instead. However, we will consider the filing as a motion to reopen and reconsider.

² Arizona Corporate Commission, State of Arizona Public Access System. (<http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/ws179.p>, accessed August 5, 2013)

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NON-PRECEDENT DECISION

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The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is dismissed.