



U.S. Citizenship  
and Immigration  
Services

(b)(6)



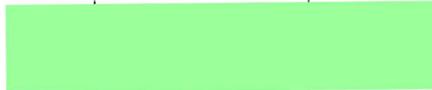
DATE: **JAN - 4 2013**

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** On October 29, 2010, 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 restaurant and is seeking to permanently employ the beneficiary in the United States as a cook, specialty, foreign food, 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 November 27, 2007. The AAO determined that the petitioner failed to establish its continuing ability to pay the proffered wage to the beneficiary since the priority date and dismissed the appeal on October 29, 2010. 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 November 24, 2010. 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. 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. 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).

**ORDER:** The appeal is rejected. The AAO's previous decision dated October 29, 2010 shall not be disturbed.