



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **JAN 11 2013** Office: TEXAS 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

(b)(6)

**DISCUSSION:** On June 21, 2002, United States Citizenship and Immigration Services (USCIS), Vermont Service Center (VSC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the VSC director on February 5, 2003. However, the Director of the Texas Service Center (TSC) revoked the approval of the immigrant petition on July 19, 2010 with a finding of fraud, and the petitioner subsequently appealed the director's decision. The decision of the director is now before the Administrative Appeals Office (AAO). The appeal will be rejected.

The petitioner is a bakery. It seeks to employ the beneficiary permanently in the United States as a baker. 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). As stated earlier, this petition was approved on February 5, 2003, but subsequently revoked in July 2010. The director determined that the petitioner failed to demonstrate that the beneficiary had the required experience as of the priority date. The petitioner appealed this decision on August 12, 2010. That appeal was rejected as untimely; the director considered the arguments made as a motion to reopen or reconsider and re-affirmed the previous decision on August 25, 2010.

The petitioner subsequently filed an appeal using Form EOIR-29. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. Title 8 C.F.R. § 103.3(a)(2)(i) requires the affected party to file an appeal using Form I-290B. In this case, the petitioner filed an appeal using Form EOIR-29, Notice of Appeal to Board of Immigration Appeals from a Decision of an INS officer.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) clearly provides the proper filing instructions, including the place of filing and the proper form that must be used. The AAO does not have the discretion to consider an improperly filed appeal. Therefore, the appeal will be rejected based on its improper filing.

**ORDER:** The appeal is rejected.