

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

(b)(6)

DATE: **MAR 19 2013** OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

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,

Rachel DiJono
for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based preference visa petition on May 3, 2007. The petitioner appealed the decision on June 22, 2007. The director treated the untimely appeal as a motion and reaffirmed his decision on September 4, 2007. The petitioner appealed the decision to the Administrative Appeals Office (AAO) on October 3, 2007. The AAO dismissed the appeal on May 20, 2009. The petitioner filed a subsequent appeal with the AAO on June 19, 2009. The petitioner's June 19, 2009 appeal will be rejected.

The petitioner is a food warehouse and distribution business. It seeks to employ the beneficiary permanently in the United States as a supervisor pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an alien employment certification, which the Department of Labor (DOL) approved, accompanied the petition.

In his May 3, 2007 decision, the director determined that the petitioner had failed to establish its ability to pay the beneficiary the proffered salary from the priority date onwards. The AAO dismissed the petitioner's appeal on May 20, 2009. 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 June 19, 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. Counsel checked box A ("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)(I).

Therefore, as the appeal was not properly filed, it will be rejected. 8 C.F.R. §103.3(a)(2)(v)(A)(I).

ORDER: The appeal is rejected. The AAO's previous decision dated May 20, 2009 shall not be disturbed. The petition remains denied.