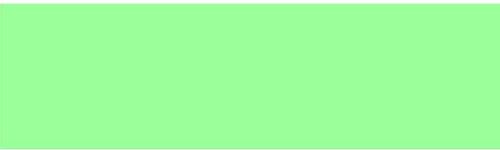


(b)(6)

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 **MAY 01 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:

SELF-REPRESENTED

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: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. On January 2, 2008, the matter was appealed to the Administrative Appeals Office (AAO). On April 28, 2010, the AAO dismissed the appeal. On May 28, 2010, a motion to reopen and reconsider the AAO's decision was submitted. The matter is again before the Administrative Appeals Office (AAO). The motion to reopen and reconsider will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

The petitioner describes itself as a construction company. It seeks to permanently employ the beneficiary in the United States as a first line supervisor in the construction trade (carpenter supervisor). The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

The director's decision denying the petition concludes that the petitioner had not demonstrated that it had the ability to pay the proffered wage from the priority date onwards. The AAO agreed with the director's decision and dismissed the appeal.

The record of proceeding contains a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, for the beneficiary's representative. Additionally, the Form I-290B, Notice of Appeal or Motion, was signed by the beneficiary. The AAO made several unsuccessful attempts to reach the petitioner by fax at the fax number provided in an experience letter dated October 5, 2006. The AAO also made several unsuccessful attempts to reach counsel at the fax number listed on a Form G-28 submitted on November 30, 2012. Additionally, the AAO notified counsel by letter dated March 14, 2013 that a properly executed Form G-28 was required. No response to this letter was received. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically prohibits a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. There is no evidence in the record that the petitioner consented to the filing of the appeal.

As the appeal was not properly filed, and it is unclear whether or not the petitioner consented to having an appeal filed on its behalf, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

ORDER: The motion to reopen and reconsider is rejected.