



U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

MAY 03 2013

Office: NEBRASKA SERVICE CENTER

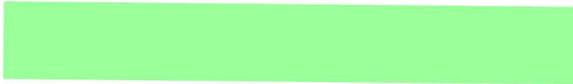
FILE:



IN RE:

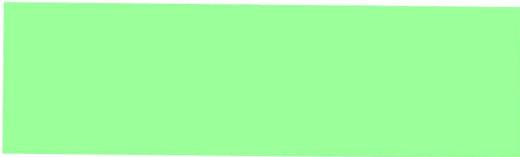
Petitioner:

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: The employment based preference visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) rejected the subsequently filed appeal. The petitioner filed a motion to reopen and reconsider the AAO's decision. The matter is now before the AAO again on appeal. The appeal will be rejected.

The petitioner is a veterinary hospital and is seeking to permanently employ the beneficiary in the United States as a veterinary technician 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 that the beneficiary met the minimum qualifications of the labor certification. The director denied the petition accordingly.

The petitioner subsequently filed an appeal which was rejected by the AAO. On April 27, 2009, the petitioner filed a motion to reopen and reconsider the AAO rejection. The motion was dismissed on May 24, 2012.

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).

On the Form I-290B submitted on June 27, 2012, the petitioner checked Box B, which states "I am filing an appeal." It is noted that the AAO does not exercise appellate jurisdiction over its own decisions. The AAO exercises appellate jurisdiction over only the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1 (effective March 1, 2003). An appeal of an AAO appeal is not properly within the AAO's jurisdiction. Nothing on the Form I-290B indicates that the petitioner intended to characterize the filing as a motion to reopen or reconsider. Further, the petitioner indicated on Form I-290B that it would file a brief and/or additional evidence within 30 days. A motion to reopen or reconsider must meet the regulatory requirements at the time it is filed. No provision exists to grant an extension to the petitioner to file evidence or arguments in the future. The fact that the petitioner checked Box B ("I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days."), does not allow it to submit evidence beyond the 30 day period allowed for motions to reopen and/or reconsider. 8 C.F.R. 103.5(a)(1)(i).

Therefore, as the appeal was not properly filed, it will be rejected.

ORDER: The appeal is rejected. The AAO's previous decision dated May 24, 2012, shall not be disturbed. The petition remains denied.