

(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: **OCT 30 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: On March 18, 2013, the Administrative Appeals Office (AAO) dismissed an appeal to the denial of an employment-based preference visa petition by the Director, Nebraska Service Center. The matter is now before the AAO again on appeal. The appeal will be rejected.

The petitioner is a real estate investment company. It seeks to permanently employ the beneficiary in the United States as a management analyst. On the Form I-140, Immigrant Petition for Alien Worker, the petitioner requested classification of the beneficiary as a professional or a skilled worker pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).

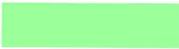
The director determined that the petitioner failed to establish its continuing ability to pay the proffered wage to the beneficiary. The director further determined that the petitioner failed to establish that the beneficiary met the experience requirements of the labor certification. The petition was denied accordingly.

The petitioner subsequently filed a timely appeal on April 29, 2009. On March 18, 2013, the AAO dismissed the appeal, concluding that the petitioner had failed to establish its continuing ability to pay the proffered wage to the beneficiary, and had further failed to show that the beneficiary met the experience requirements of the labor certification. 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 filed another appeal on the petitioner's behalf on April 18, 2013. 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 Part 2 of the Form I-290B, Notice of Appeal or Motion. Instead, counsel checked box B ("I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days").¹ Further, counsel separately filed a supporting brief on May 17, 2013, rather than submitting it with the Form I-290B, as required for filing of motion. The fact that the petitioner on the Form I-290B incorrectly checked box B does not allow the petitioner to submit evidence beyond the 30-day period allowed for motions. 8 C.F.R. §

¹ There is no indication on the Form I-290B that the petitioner intended to file a motion.

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NON-PRECEDENT DECISION

103.5(a)(1)(i). 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).

ORDER: The appeal is rejected.