

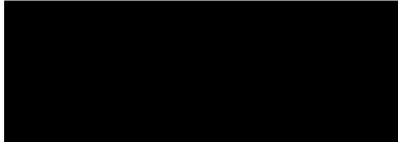
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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
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Date: SEP 07 2011

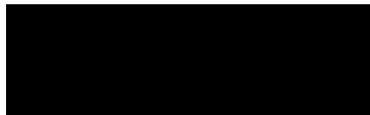
Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

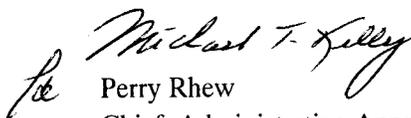


INSTRUCTIONS:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director revoked approval of the instant nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is again before the AAO, as an appeal. The appeal will be rejected.

The director revoked approval of the petition on the basis that the petitioner had failed to establish that the beneficiary had maintained legal status as required by 8 C.F.R. § 214.1(c)(4) and failed to establish that it would employ the beneficiary in a specialty occupation position within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO dismissed the appeal taken from the decision of revocation. The AAO's decision included an analysis of the merits of the case. The instant appeal was filed, on May 1, 2009, to contest that decision.

The petitioner's appeal must be rejected. The AAO does not exercise appellate jurisdiction over AAO decisions. The AAO exercises appellate jurisdiction over 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; 8 C.F.R. § 103.3(a)(iv). Accordingly, the appeal is not properly before the AAO.

Therefore, as the appeal was not properly filed, it will be rejected pursuant to 8 C.F.R. §103.3(a)(2)(v)(A)(1).

Further, the assertions of the instant Form I-290B consist of the following statement at Part 3 of the Form I-129, which do not specify any particular error in law or fact:

Affidavit and supporting documents were submitted earlier. Additional proof and documents would be submitted to the USCIS in the next thirty days.

The petitioner also checked Box B in Part 2 of Form I-290B to indicate that a brief or additional evidence, or both, would be submitted within 30 days. No brief or new evidence was submitted to the AAO with the Form I-290B.

The AAO observes that the petitioner had the option of filing a motion to reopen or a motion to reconsider the AAO's most recent decision within 33 days of service pursuant to 8 C.F.R. §103.5. However, although the regulation at 8 C.F.R. §103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. Unlike an appeal, the Form I-290B and any brief and additional evidence must be filed at one time, and whatever documents are first submitted on motion comprise that motion and cannot be later supplemented. *See* 8 C.F.R. §§ 103.5(a)(2) and (3).

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part, "*Requirements for motion to reopen.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

The regulation at 8 C.F.R. § 103.5(a)(3) states:

*Requirements for a motion to reconsider.* A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [USCIS] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

As reflected in this decision's comments regarding the facts that the Form I-129 contains no specific assignment of error and was filed without any new evidence, the instant appeal meets neither the requirements for a motion to reopen nor a motion to reconsider. Therefore, even if the instant appeal had been filed as a motion, it would not have met the applicable requirements and would have been dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

**ORDER:** The appeal is rejected.