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

(b)(6)

U.S. Citizenship and Immigration Services

DATE JUL 15 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the service center director. The petitioner filed an appeal seeking review by the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The matter is again before the AAO on a second appeal. The appeal will be rejected.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on October 7, 2010. In the letter submitted with the Form I-129 visa petition, the petitioner describes itself as a clothing manufacturer established in 1993. In order to employ the beneficiary in what it designates as a production manager position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation 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).

The director denied the petition on the basis that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner appealed the director's decision to the AAO. The AAO dismissed the appeal and denied the petition.

The matter is once again before the AAO. As indicated by the check mark at box B of Part 2 of the Form I-290B, the petitioner elected to file an appeal. The AAO reviewed the submission and notes that the petitioner's appeal must be rejected. The AAO does not exercise appellate jurisdiction over AAO decisions.[1] The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). 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), with one exception - petitions for approval of schools under § 214.3 are now the responsibility of Immigration and Customs Enforcement (ICE). The regulations limit the AAO's jurisdiction over petitions for temporary workers to those described under 8 C.F.R. §§ 214.2 and 214.6. *See* 8 C.F.R. § 103.1(f)(3)(iii)(J) (2003). Accordingly, the appeal is not properly before the AAO.[2]

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[1] The appeal is not properly before the AAO. The AAO reminds the petitioner and counsel that the AAO does not have the discretion to disregard its own regulations. *See Reuters Ltd. v. F.C.C.*, 781 F.2d 946 (C.A.D.C. 1986) (an agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned).

[2] Further, it should be noted that the petitioner had the option of filing a motion to reopen and/or a motion to reconsider the AAO's most recent decision. In the decision dated November 8, 2012, the AAO stated the following:

> If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware

The AAO does not exercise appellate jurisdiction over AAO decisions. Accordingly, the appeal must be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(*1*).

ORDER: The appeal is rejected.

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that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

The AAO notes that its decision was issued on Thursday, November 8, 2012, and the instant appeal was received on Wednesday, December 12, 2012. The submission was received 34 days after the AAO's decision. Thus, the instant submission was untimely filed.