

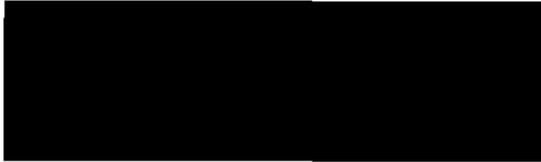
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: **NOV 16 2011** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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

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 Director, California Service Center, denied the nonimmigrant visa petition. The AAO dismissed the petitioner's subsequent appeal. The matter is now before the AAO on appeal for a second time. The appeal will be rejected.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in the arts. The petitioner, which is self-described as a senior housing community, seeks to employ the beneficiary in the position of Executive Chef. The beneficiary was previously granted O-1 status for employment with a different petitioner and the petitioner now seeks to extend his status for two additional years.

The director denied the petition on May 3, 2010, concluding that the petitioner failed to establish that the beneficiary is an alien of extraordinary ability in the culinary arts. The director determined that the petitioner failed to establish that the beneficiary meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), and submitted evidence to satisfy only one of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B), of which three must be met to establish eligibility. The AAO dismissed the petitioner's subsequent appeal on December 22, 2010, and advised the petitioner that it could file a motion to reopen or motion to reconsider pursuant to the requirements at 8 C.F.R. § 103.5 within 30 days of the AAO's decision.

On January 21, 2011, the petitioner filed a Form I-290B, Notice of Appeal or Motion, indicating that it was seeking to appeal the AAO's decision. Counsel indicated on the Form I-290B that he would submit a brief and/or additional evidence in support of the appeal within 30 days. The AAO received the petitioner's brief and evidence on April 22, 2011. Upon review of the petitioner's submissions, there is no indication that counsel intended to file a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5.

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.

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

There is no regulatory or statutory provision that allows a petitioner more than one appellate decision per petition filed. As noted above, the AAO did advise the petitioner that it had the option of filing a motion to reopen or a motion to reconsider the AAO's decision within 33 days of service pursuant to 8 C.F.R. § 103.5. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding, in this case, the AAO.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

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:

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 [U.S. Citizenship and Immigration Services (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.

A review of the petitioner's submission reveals no facts that could be considered "new." Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.<sup>1</sup> The majority of the supplemental evidence offered on this second appeal was previously submitted and already considered by the AAO in issuing its prior decision. Further, counsel's brief contains no citations to appropriate statutes, regulations or precedent decisions, such that it could meet the requirements of a motion to reconsider.

In addition, the regulation at 8 C.F.R. §103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." The petitioner's submission does not contain this statement. The AAO finds no basis to treat the improperly filed appeal as a motion to reopen or reconsider.

As the appeal was improperly filed, it must be rejected.

**ORDER:** The appeal is rejected.

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<sup>1</sup> The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . ." *Webster's II New College Dictionary* 736 (2001) (emphasis in original).