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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: JUL 28 2011 Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiaries: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 petition for a nonimmigrant visa. The Administrative Appeals Office (AAO) rejected the appeal as untimely filed. The matter is now before the AAO again on appeal. The appeal will be rejected.

The petitioner is a farm labor provider that seeks to employ the beneficiaries as farm laborers pursuant to section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(H)(ii)(a) for the period from November 1, 2009 until June 30, 2010.

The director denied the petition on September 12, 2009, concluding that the petitioner had not submitted a temporary labor certification from the U.S. Department of Labor (DOL); and, the petitioner did not establish that the need for the services to be performed is temporary.

The record indicates that the director issued the decision on September 12, 2009. The director properly gave notice to the petitioner that it had 33 days to file the appeal. The appeal was received by the director on November 24, 2009, 73 days after the decision was issued. Accordingly, on September 3, 2010, the AAO rejected the appeal as untimely filed.

On September 27, 2010, the petitioner filed the instant appeal. The petitioner indicated on Form I-290B, Notice of Appeal or Motion, that it is filing an appeal, and that a brief and/or additional evidence is attached. In addition, the petitioner submits a statement requesting a reconsideration of the AAO's prior 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. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

Finally, it should be noted that the petitioner did have 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. The petitioner's appeal does not meet the requirements of a motion. The petitioner did not submit any supporting documentation to overcome the director's concerns.

**ORDER:** The appeal is rejected.