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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY

[REDACTED]

APR 18 2003

File: [REDACTED] Office: TEXAS SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ON BEHALF OF BENEFICIARY:

[REDACTED]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Elizabeth Hayward
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner, which describes its business as “adjusters – marine – surveyors – recoveries,” seeks to employ the beneficiary as its vice president of worldwide adjusting operations. On the I-140 petition form, the petitioner indicated that it seeks to classify the beneficiary as a member of the professions holding an advanced degree or an alien of exceptional ability pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined the position does not require an advanced degree, and that the beneficiary does not hold an advanced degree. The director did not address the issue of exceptional ability.

8 C.F.R. 103.3(a)(2)(i) requires the filing of an appeal “with the office where the unfavorable decision was made within 30 days after service of the decision.” 8 C.F.R. 103.3(a)(2)(v)(B)(1) states “[a]n appeal which is not filed within the time allowed must be rejected as improperly filed.” The date of the denial notice is February 6, 2001. The beneficiary’s attorney submitted the appeal directly to the AAO, and not to the office where the unfavorable decision was made. The appeal did not reach the Texas Service Center, and thus was not properly filed, until April 19, 2001. Beyond this untimely filing, another issue arises which requires rejection of the appeal.

8 C.F.R. 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

8 C.F.R. 103.3(a)(2)(v) states:

Improperly filed appeal -- (A) Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the attorney for the beneficiary. Therefore, the appeal has not been properly filed, and must be rejected.

We acknowledge that the attorney for the beneficiary had previously represented the petitioner as well. However, a Form G-28 Notice of Entry of Appearance as Attorney or Representative in the record shows that the petitioner secured new counsel on March 9, 2001, and filed an appeal through this new attorney on March 12, 2001. That Form G-28 supersedes the older one from August 1, 2000, which designated the beneficiary’s attorney as counsel for the petitioner. The appeal at hand



includes a new Form G-28, dated March 5, 2001, but it was signed only by the beneficiary, not by any representative of the petitioning entity. Even if the form had been properly executed by the petitioner, it would have been superseded days later by the March 9, 2001 Form G-28 mentioned above.

Because the appeal was filed by an attorney whose legal standing to represent the petitioner ended when the petitioner retained new counsel, and because the appeal was not submitted to the correct office within the time allowed, the regulations mandate the rejection of this appeal without prejudice to the outcome of the appeal filed by the petitioner's new attorney.

ORDER: The appeal is rejected.