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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

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DEC 16 2003

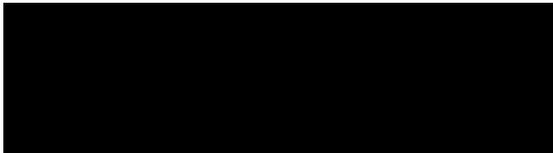
File: WAC 01 244 60595 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



PUBLIC COPY

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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner filed the Immigrant Petition for Alien Worker (I-140) through counsel, who filed a Notice of Entry of Appearance as Attorney or Representative (G-28). 8 C.F.R. § 292.4(a). The director determined that the petitioner did not have sufficient income to pay the proffered wage and had not paid it to the beneficiary. The director denied the petition on March 4, 2002.

The beneficiary signed the appeal filed April 15, 2002. Counsel attached a number of evidentiary statements in a brief dated April 3, 2002. None claims to represent the petitioner in the appeal.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)

Only counsel and the beneficiary executed and submitted the G-28 and the appeal. Hence, the petitioner assents neither to the appeal nor its representation before Citizenship and Immigration Services (CIS), formerly the Service or the INS. The beneficiary, on the other hand, has no standing to initiate either the appearance of counsel or the appeal.

8 C.F.R. 103.3(a)(1)(iii) explicitly provides as to appeals:

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

Since only an affected party may maintain an appeal, the beneficiary's must be rejected. No authorized party has filed a G-28. 8 C.F.R. § 292.4(a).

8 C.F.R. § 103.3(a)(2)(v)(A) explicitly provides,

(2) *Appeal by attorney or representative without proper Form G-28-(i) General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee [CIS] has

accepted will not be refunded regardless of the action taken.

Similarly, only an authorized party may file an appeal. 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 [CIS] has accepted will not be refunded.

The petitioner executed no G-28 to authorize CIS to recognize any appearance of counsel for the appeal. 8 C.F.R. § 292.4(a). The beneficiary and counsel improperly filed an appeal. Therefore, the appeal must be rejected.

ORDER: The appeal is rejected.