

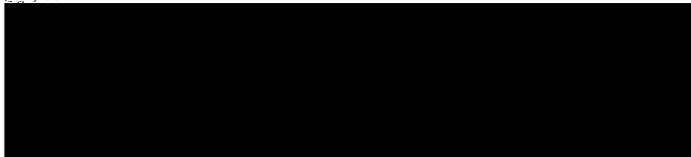


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U.S. Department of Justice
Immigration and Naturalization Service

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



JAN 29 2003

File: SRC 01 160 53155 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

PHOTOCOPY

IN BEHALF OF PETITIONER: NONE

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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The beneficiary, who is said to be employed by Electronic d/b/a CAL and Auto Electric (sic), signed and filed the present petition on his own behalf. The beneficiary seeks classification as an unskilled, other worker under Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(iii). The director denied the immigrant visa petition because the beneficiary signed the petition instead of the United States employer. The director also noted that the record contained no labor certification, namely, Form ETA 750.

An alien may not self-petition for this visa classification. As stated in 8 C.F.R. 204.5(c), "Any United States employer desiring and intending to employ an alien may file a petition for classification under section ... 203(b)(3) of the Act..."

In this case, the appeal was not filed by the petitioner, nor by any entity with legal standing in this proceeding, but by the beneficiary. Since the appeal has not been properly filed, it must be rejected. 8 C.F.R. 103.3(a)(2)(v).

Furthermore, 8 C.F.R. 103.1 (f)(3)(iii) states in pertinent part:

Appellate Authorities. In addition, the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on ...

(B) Petitions for immigrant visa classification based on employment or as a special immigrant or entrepreneur under §§204.5 and 204.6 of this chapter except when the denial is based upon lack of a certification by the Secretary of Labor under section ... 212(a)(5)(A) of the Act..."

As there is no appeal available when a decision is based on a lack of labor certification, this appeal must be rejected.

ORDER: The appeal is rejected.