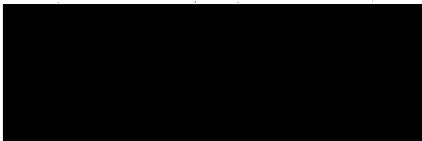


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prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

File:



Office: CALIFORNIA SERVICE CENTER

Date:

APR 15 2004

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

The petitioner is an automobile shop. It seeks to employ the beneficiary permanently in the United States as an automobile mechanic. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and denied the petition accordingly.

The attorney who filed the appeal in this matter submitted two Form G-28 Notices of Entry of Appearance in this matter. Both of those notices state that the attorney represents the beneficiary. On the Form I290B Notice of Appeal, counsel again stated that he represented the beneficiary. The record contains no indication that the petitioner has agreed to be represented by counsel and no indication that the petitioner filed or even approved this appeal.

The regulation at § 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.

The regulation at § 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 was not filed by the petitioner or by any entity with legal standing in this proceeding, but by the beneficiary's attorney. The beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). Only the affected party is permitted to file an appeal. 8 C.F.R. § 103.3(a)(2)(i). As the beneficiary and his representative are not recognized parties, counsel is not authorized to file an appeal. 8 C.F.R. §

103.3(a)(2)(v)(A) and (B).

Therefore, the appeal has not been properly filed, and must be rejected.

ORDER: The appeal is rejected.