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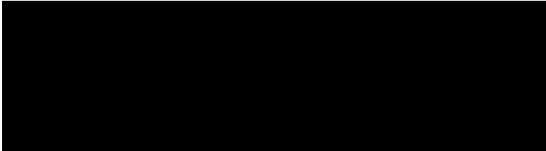
U.S. Department of Homeland Security

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prevent clearly unwarranted

Citizenship and Immigration Services

Section of Administrative Appeals

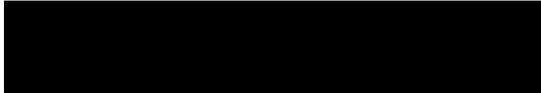
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



File: WAC 02 189 50246 Office: CALIFORNIA SERVICE CENTER

Date: JAN 14 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: N/A

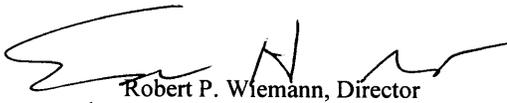
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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.


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.

The petitioner is a medical diagnostic center. It seeks to employ the beneficiary permanently in the United States as a medical assistant. 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.

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 CIS) 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 CIS has accepted will not be refunded.

David Nakatsuma, a California attorney, filed the appeal in this matter. On that appeal, counsel indicated that he represents the beneficiary. A Form G-28 Notice of Entry of Appearance in the file confirms that the beneficiary has consented to be represented by counsel.

Although counsel stated on a brief submitted to supplement the appeal that he represents both the beneficiary and the petitioner, the record contains no evidence that the petitioner has consented to be represented by counsel. The file does not contain a Form G-28 Notice of Entry of Appearance signed by a representative of the petitioner and acknowledging that attorney as its counsel. On the Form I-290B Notice of Appeal, counsel states that he represents the beneficiary, not the petitioner. Therefore, this office recognizes counsel as representing the beneficiary only.

The appeal was not filed by the petitioner, nor by any entity with legal standing in this proceeding, but by counsel for the

beneficiary. The beneficiary does not have legal standing to file an appeal. Therefore, the appeal has not been properly filed, and must be rejected.

ORDER: The appeal is rejected.