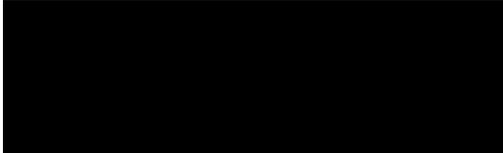


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prevent creation of unwarranted
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U.S. Department of Homeland Security
Citizenship and Immigration Services

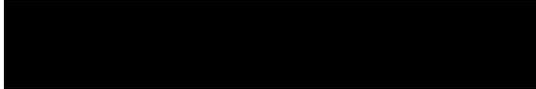
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536



File: WAC 02 212 50743 Office: CALIFORNIA SERVICE CENTER

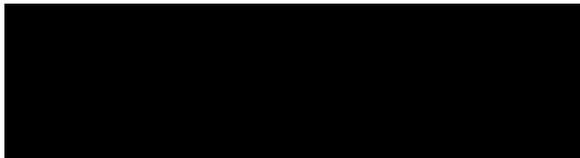
Date: **JAN 14 2004**

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:



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 pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The record contains Form G-28, Notices of Entry of Appearance, from three different attorneys. Only one of those forms, however, is signed by a representative of the petitioner. All representations will be considered, but the decision will be furnished only to the petitioner and his attorney of record.

The petitioner is a landscaping service. It seeks to employ the beneficiary permanently in the United States as a landscaper. 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.

John C. Lee, an attorney, filed the appeal in this matter. Mr. Lee indicated on the Form I-290B appeal that he represents the beneficiary. A Form G-28, Notice of Entry of Appearance in the file indicates that Mr. Lee works for Hispanic Legal Services, at 250 N. Golden Circle, Suite 205, in Santa Ana, California. The beneficiary signed that Form G-28. The file contains no Form G-28 indicating that the petitioner consented to be represented by Mr. Lee or Hispanic Legal Services.

The file contains another Form G-28 signed by a representative of the petitioner. That Form G-28 indicates that the petitioner consented to be represented by John C. Montano, Jr., of the Law Offices of John Montano, Jr. Those law offices are at the same address, including suite number, as the office of John C. Lee. However, the Form G-28 contains no indication that the petitioner consented to be represented by John C. Lee or Hispanic Legal Services.

Because the attorney who filed the appeal stated that he represents the beneficiary, and because the file contains no indication that the petitioner consented to be represented by that attorney, the appeal must be treated as having been filed by the counsel for the beneficiary.

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, nor 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.