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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship
and Immigration
Services

BE

[Redacted]

FILE: EAC-02-184-50338 Office: VERMONT SERVICE CENTER

Date: JUL 23 2004

IN RE: Petitioner:
Beneficiary:

[Redacted]

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

for Robert P. Wiemann, Director
Administrative Appeals Office

CC:

[Redacted]

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

The petitioner provides home improvement and construction services. It seeks to employ the beneficiary permanently in the United States as a carpenter. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. 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 or that the beneficiary met the qualifications for the position, and denied the petition accordingly.¹

The Form G-28 (Form G-28), Entry of Appearance as Attorney or Representative, submitted in conjunction with the Form I-290B, indicates that the beneficiary retained counsel to file the appeal. Citizenship and Immigration Services (CIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal.² 8 C.F.R. § 103.3(a)(1)(iii)(B). As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

ORDER: The appeal is rejected as improperly filed.

¹ The director could have denied the petitioner based on abandonment as the petitioner failed to submit initial evidence of the petitioner's *continuing* ability to pay the proffered wage as well as evidence of the beneficiary's qualifications with the initial petition or in response to the director's request for evidence. The petitioner was provided 84 days (twelve weeks) to provide a response to the director's request for evidence. Three additional days were provided because the request for evidence was sent to the petitioner by mail. The request for evidence was issued on September 15, 2002. The response was due on December 11, 2002, including the additional three days. The petitioner never submitted a response. See 8 C.F.R. §§ 103.2(b)(8),(13).

² Counsel was contacted by telephone regarding the omission of a Form G-28 reflecting the petitioner's retention of counsel for its representation. Counsel was provided an opportunity to submit a Form G-28 with an authorized signatory from the petitioner to correct the improper filing. At that time, counsel informed the AAO's administrative personnel that it was impossible for him to obtain a Form G-28 from the petitioner since it had gone bankrupt.