

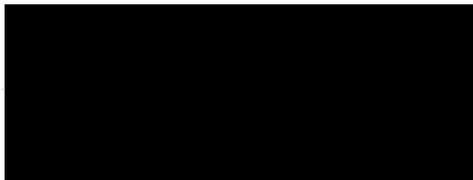
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



B6

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **JAN 12 2005**
SRC 02 175 53999

IN RE: Petitioner:
Beneficiary



PETITION: Immigrant Petition for Other Worker pursuant to § 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 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petition in this matter was filed by the beneficiary, rather than by a United States employer. That is, although the petition lists an ostensible petitioner, the petition was not signed by an official of the petitioning company, but by the beneficiary. The petition is not accompanied by a Form ETA 750 Application for Alien Employment Certification. The director determined, therefore, that the petition could not be approved.

On appeal, the beneficiary submits a statement.¹

Section 203(b)(3)(a)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature for which qualified workers are not available.

Section 203(b)(3)(C) of the Act states:

LABOR CERTIFICATION REQUIRED. – An immigrant visa may not be issued to an immigrant under subparagraph (A) until the consular officer is in receipt of a determination made by the Secretary of Labor Pursuant to the provisions of section 212(a)(5)(A).

The regulation at 8 C.F.R. § 204.5(1)(1) *Skilled workers, professionals, and other workers* states:

Any United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(3) as a skilled worker, professional, or other (unskilled) worker.

The regulation at 8 C.F.R. § 204.5(1)(3) *Initial evidence* states, in pertinent part:

(i) *Labor certification or evidence that alien qualifies for Labor Market Information Pilot Program.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation, or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program.

(ii) *Other documentation – (A) General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

On appeal, the beneficiary merely asserts that he wants CIS to approve the petition. No substantive argument is offered.

¹ This office notes that the beneficiary, in addition to not being permitted to file the petition, is not permitted to file the appeal. See 8 C.F.R. § 103.3(a)(1)(iii). Thus, even if the appeal had raised a substantive defense to the beneficiary having filed the petition, the appeal would be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v).



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The record demonstrates that the petition in this matter was not filed by a United States employer, as required by 8 C.F.R. 204.5(l)(1). In addition, the petition was not accompanied by the required supporting documents.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.