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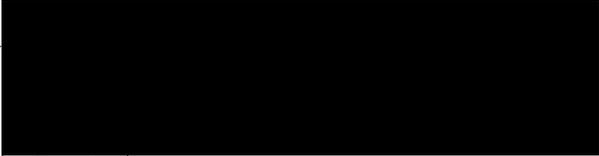
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B6



FILE: WAC 03 140 51135 Office: CALIFORNIA SERVICE CENTER Date: **JAN 13 2005**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 Director, California Service Center, denied the preference visa petition that is now before the Administrative Appeals Office on appeal.

The petition in this matter was filed by the beneficiary, rather than by a United States employer. The director determined, therefore, that the petition could not be approved.

On appeal, the prospective employer submits a statement.

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.

The regulation at 8 C.F.R. § 204.5(l)(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."

On appeal, the petitioner states,

We apologize for the misunderstanding regarding the proper signature for Mr. Ruben T. Castro I-140 application (WAC 03 140 511350). It was our understanding that to authorize or release any information to INS to determine eligibility for the benefit I am seeking, was Mr. Ruben T. Castro. We stand corrected, and further state that we did not willfully intend to submit an improper signature and/or application.

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). The petition may not now, on appeal, be converted into a petition filed by the prospective employer.

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.