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



U.S. Citizenship
and Immigration
Services

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MAR 16 2005



FILE:

EAC 01 133 51868

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:
Beneficiary

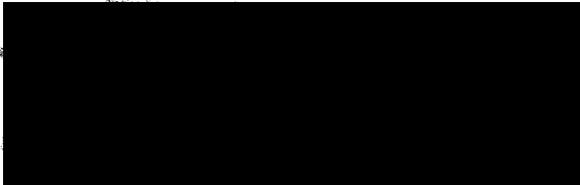


PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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, Vermont Service Center, denied the preference visa petition that 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)(I).

The petitioner is an employment placement/consulting firm. It seeks to employ the beneficiary permanently in the United States as a registered nurse. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification. The petition was initially approved, then revoked based on its withdrawal by the petitioner. The record contains an October 24, 2002 letter from the petitioner's vice-president evincing that withdrawal.

The petitioner was previously represented by counsel. On appeal, counsel states that he represents the beneficiary. Further, counsel asserts that the petitioner does not have the capacity to withdraw the petition. By opposing the petitioner's withdrawal of the petition, counsel makes clear that he no longer represents the petitioner. Counsel would not, therefore, ordinarily receive a copy of today's decision. However, because counsel, and not the petitioner, filed the appeal, a copy of the decision shall be accorded to counsel to inform him of its disposition.

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 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 counsel acting on behalf of the beneficiary. 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.