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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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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 03 2005
WAC-03-160-50352

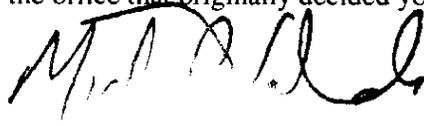
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: 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: 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, California Service Center on July 21, 2004. An I-290B Notice of Appeal was filed on August 19, 2004 by Attorney [REDACTED]. The appeal will be rejected.

On the I-290B Notice of Appeal, on the line for the name of the "person and/or organization" for whom Attorney [REDACTED] appearing the beneficiary's name appears. The record contains an original Form G-28 Notice of Entry of Appearance as Attorney or Representative on behalf of the beneficiary dated January 29, 2003 signed by Attorney [REDACTED] and co-signed by the beneficiary. The record also contains a photocopy of that Form G-28. The record contains no Form G-28 from Attorney [REDACTED] on behalf of the petitioner.

The non record side of the file contains copies of two Form G-28's dated December 6, 2002 from another attorney, one on behalf of the petitioner and one on behalf of the beneficiary. That attorney, however, has a different office name and a different address than Attorney [REDACTED]. The attorney who signed those Form G-28's had no evident participation in filing the instant appeal.

The regulations contain several provisions relating to the proper filing of appeals as follows.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states:

Meaning of affected party. For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

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 [that CIS] has accepted will not be refunded.

The regulation at 8 C.F.R. § 103.3(a)(2)(ii) states:

Reviewing official. The official who made the unfavorable decision being appealed shall review the appeal unless the affected party moves to a new jurisdiction. In that instance, the official who has jurisdiction over such a proceeding in that geographic location shall review it.

Finally, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) provides:

Appeal by attorney or representative without proper Form G-28—(i) General. If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee [CIS] has accepted will not be refunded regardless of the action taken.

(ii) When favorable action warranted. If the reviewing official decides favorable action is warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of the request. If Form G-28 is not submitted within the time allowed, the official may, on his or her own motion, under Sec. 103.5(a)(5)(i) of this part, make a new decision favorable to the affected party without notifying the attorney or representative.

(iii) When favorable action not warranted. If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the AAU. The official shall also forward the appeal and the relating record of proceeding to the AAU. The appeal may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.

In the instant case, the reviewing official for the purpose of the regulations at 8 C.F.R. § 103.3(a)(2)(ii) and 8 C.F.R. § 103.3(a)(2)(v)(A)(2) is the director. The director apparently determined that no favorable action was warranted on the notice of appeal, for the director transmitted the notice of appeal and the file to the AAO.

The notice of appeal and the G-28 from Attorney [REDACTED] fail to conform to the above provisions. The beneficiary lacks legal standing to appeal the petition and no G-28 on behalf of the petitioner has been submitted by Attorney [REDACTED] who is the attorney who filed the appeal. Therefore, the appeal has not been properly filed and must be rejected.

ORDER: The appeal is rejected.