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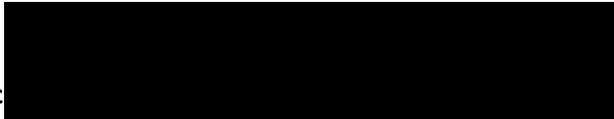
[Redacted]  
WAC-03-133-53690

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 06 2005**

IN RE:

Petitioner:  
Beneficiary:



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

[REDACTED]

**DISCUSSION:** The Director of the California Service Center denied the employment-based immigrant visa petition and a subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reopen or reconsider. The motion will be rejected.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a skilled worker. The director determined that the petitioner failed to establish its ability to pay the proffered wage out of its net income or net current assets. The AAO summarily dismissed the appeal on September 23, 2004 because counsel did not provide a specific reason or citation to legal authority, or provide additional evidentiary support, for his assertion that the director's decision was erroneous and failed to submit a brief and evidence as he indicated he would do.

[REDACTED] submitted a letter on December 7, 2004, along with a Form G-28, Notice of Entry of Appearance as Attorney or Representative (Form G-28), on behalf of the beneficiary. The record of proceeding does not contain a properly executed Form G-28 from the petitioner for [REDACTED]. [REDACTED] states that the prior counsel of record, [REDACTED] has been "disbarred" and has many "complaints against him," and filed two appeals in the instant matter. [REDACTED] noted that one appeal was dismissed and inquired about the status of the other appeal along with submission of previously submitted documents and a question as to how the petition could be denied considering the amount of wages the petitioner had paid to all of its employees in 2001 and 2002.

At the outset, the motion to reopen or reconsider was filed by an improper party to these proceedings. 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. 8 C.F.R. § 103.3(a)(1)(iii)(B). Those provisions are applicable to the filing of a motion to reopen or reconsider since an "affected party" referenced in 8 C.F.R. § 103.5 refers to a party with standing, which is only the petitioner or the petitioner's representative. Since the record of proceeding does not contain a properly executed Form G-28 on behalf of the petitioner from [REDACTED] the motion to reopen or reconsider must be rejected for that reason.

Additionally, the petitioner is considered self-represented since [REDACTED] has been suspended from the practice of law for one year commencing in May 2005 according to a September 2005 report by the Executive Office for Immigration Review. Under 8 C.F.R. § 292.1, persons entitled to represent individuals in matters before the Department of Homeland Security ("DHS"), and the Immigration Courts and Board of Immigration Appeals ("Board"), or the DHS alone, include, among others, accredited representatives. Any such representatives must be designated by a qualified organization, as recognized by the Board. A recognized organization must apply to the Board for accreditation of such a representative or representatives. Thus, [REDACTED] is not currently entitled to represent the petitioner and no correspondence will be sent to him.

The AAO construes the letter submitted by [REDACTED] as an attempt to submit a motion to reopen or consider although it was not titled as such. However, the content of [REDACTED] letter does not meet the regulatory requirements of a motion to reopen or a motion to reconsider. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Generally, the new facts must have been previously

[REDACTED] refers to WAC-03-262-54165 as the dismissed appeal and WAC-03-266-53558 as the pending appeal. When prior counsel submitted two appeals, the director assigned two receipt numbers to each Form I-290B. Each appeal was exactly the same but was not required to be filed in duplicate. There is no provision for filing two appeals of the same matter concurrently. Thus, despite the procedural awkwardness of two receipt numbers, the petitioner's "two appeals" are really the same singular appeal and was adjudicated by the AAO on September 23, 2004.

[REDACTED]

unavailable and could not have been discovered earlier in the proceedings. *See* 8 C.F.R. § 3.2(c)(1). Here, no evidence in the motion contains new facts that were previously unavailable. Additionally, the content of [REDACTED] letter also does not satisfy the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3) because he fails to assert that the director and the AAO made an erroneous decision through misapplication of law or policy.

Finally, even if the proper party had filed the motion and the motion met the regulatory requirements for a motion to reopen or reconsider, the filing would be rejected as untimely. An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before CIS. 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three days is added to the proscribed period. 8 C.F.R. § 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The record indicates that the director of the AAO issued the decision on September 23, 2004. It is noted that the director properly gave notice to the petitioner that it had 30 days to file any motions. [REDACTED] letter was received on December 7, 2004. Accordingly, the motion was untimely filed. Neither [REDACTED] or the petitioner presents any evidence for CIS to consider regarding the delay in timely filing the motion. 8 C.F.R. § 103.5(a)(1)(i). Accordingly, the motion would be dismissed on those grounds as well.

**ORDER:** The motion is rejected.