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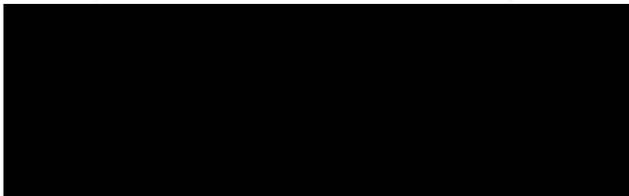
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

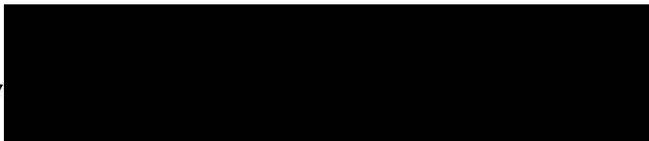
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FILE: WAC 04 214 52102 Office: CALIFORNIA SERVICE CENTER Date: DEC 06 2006

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)

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, Chief
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 appeal will be rejected.

A third party, [REDACTED] filed the Form I-140 petition in this matter. A Form G-28 Notice of Entry of Appearance in the record indicates that the beneficiary recognizes that [REDACTED] as his representative. The record, however, contains no G-28 executed by the petitioner. The record contains no indication that the petitioner has agreed to be represented.

Further, [REDACTED] does not indicate that he is an attorney or an accredited representative in the space provided for such purpose on the Form G-28. Instead, [REDACTED] indicated that he is a Labor Certification Specialist in that space on the Form G-28. Further still, the roster of accredited representatives¹ maintained by the Bureau of Immigration Appeals (BIA) does not include [REDACTED] name, and the organization for which he purports to work is not included on a list of recognized, accredited organizations² maintained by the BIA. [REDACTED] and his organization are apparently not accredited and as such are not qualified to represent the petitioner or the beneficiary in this matter.

All representations submitted into the record will be considered, but the decision will be furnished only to the petitioner.

The petitioner is an automotive service shop. It seeks to employ the beneficiary permanently in the United States as an auto and truck mechanic. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanied the petition. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and that it had not established that the beneficiary has the requisite experience as stated on the labor certification petition. The director denied the petition accordingly.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party, in order to properly file an appeal, must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued the decision of denial on May 26, 2005. The director properly gave notice to the petitioner that it had 30 days to file the appeal. Citizenship and Immigration Services (CIS) received the appeal on June 30, 2005, 35 days after the decision was issued. The appeal, therefore, was untimely filed. Counsel offered no explanation of the late filing.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the

¹ Located at <http://www.usdoj.gov/eoir/statspub/accreditedreposter.pdf>. Accessed November 17, 2006.

² Located at <http://www.usdoj.gov/eoir/statspub/recognitionaccreditationroster.pdf>. Accessed November 17, 2006.

last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

The record suggests an additional issue that was not mentioned in the decision of denial.

Pursuant to 20 C.F.R. § 656.20(c)(8)(2004)³ the petitioner has the burden when asked to show that a valid employment relationship exists and that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (October 15, 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or the relationship may "be financial, by marriage, or through friendship." *See Matter of Sunmart 374*, 2000-INA-93 (May 15, 2000).

The petitioner's owner and the beneficiary share the same family name. This suggests that they may be related. If so, this relationship would have to be scrutinized before the petition could be approved. Because the decision of denial did not raise this issue, and the petitioner has not been accorded an opportunity to respond, today's decision is not based, even in part, on that issue. If the petitioner attempts to overcome today's decision on appeal, however, it should address that issue.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.

³ The regulatory scheme governing the alien labor certification process contains certain safeguards to assure that petitioning employers do not treat alien workers more favorably than U.S. workers. The current Department of Labor regulations concerning labor certifications went into effect on March 28, 2005. The new regulations are referred to by the Department of Labor by the acronym PERM. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004). The PERM regulation was effective as of March 28, 2005, and applies to labor certification applications for the permanent employment of aliens filed on or after that date. However, the instant labor certification application was filed prior to March 28, 2005 and is governed by the prior regulations. This citation and the citations that follow are to the Department of Labor regulations as in effect prior to the PERM amendments.