

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

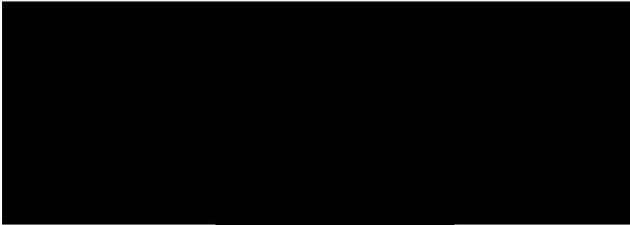
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



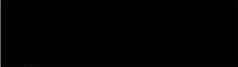
U.S. Citizenship  
and Immigration  
Services

B6

**PUBLIC COPY**



FILE:



Office: VERMONT SERVICE CENTER

Date: **DEC 28 2006**

EAC 03 250 51500

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 Acting Director, Vermont Service Center, denied the instant preference visa petition, then reopened the matter pursuant to a motion and denied the petition again. The matter 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 a construction contractor. It seeks to employ the beneficiary permanently in the United States as a painting supervisor. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The acting 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 the petitioner had failed to demonstrate that the beneficiary has the requisite employment experience as stated on the labor certification. The acting director denied the petition accordingly.

On the motion the acting director reopened the matter and affirmed the previous decision, denying the petition again. In that second decision the acting director noted that the record did not contain a Form G-28 Entry of Appearance executed by the petitioner recognizing counsel.

The Form I-290B appeal stated, "G-28 on file" on that form. This office notes that the only Form G-28 in the record was executed by the beneficiary, recognizing his counsel. The record contains no evidence that the petitioner has consented to be represented by counsel or acquiesced in filing the instant appeal.

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.

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). Although counsel states that he represents the petitioner, no Form G-28 was submitted signed by both counsel and the petitioner's authorized representative.

The appeal was not filed by the petitioner, nor by any entity with legal standing in this proceeding, but by the beneficiary's counsel. 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 as improperly filed.