



U.S. Citizenship
and Immigration
Services

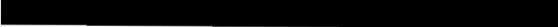
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FILE:  Office: CALIFORNIA SERVICE CENTER Date: MAR 10 2006
WAC 04 051 51612

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:



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, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director determined that the petition in this matter could not be approved because it is not accompanied by an approved Form ETA 750 Application for Alien Employment Certification, by an application for Schedule A designation, or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program, as required by 8 C.F.R. § 204.5(l)(3)(i).

The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation No. 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2004). Pursuant to that delegation, the AAO's jurisdiction is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). See DHS Delegation Number 0150.1(U) *supra*; 8 C.F.R. § 103.3(a)(iv).

Among the appellate authorities are appeals from denials of petitions for immigrant visa classification based on employment, "except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act." 8 C.F.R. § 103.1(f)(3)(iii)(B)(2003 ed.).

This office has no jurisdiction over a petition denied based upon lack of a labor certification. As the petition in this matter was denied for that reason, among others, this office has no jurisdiction and the appeal must be rejected.

It is further noted that the beneficiary, who lacks legal standing in the proceeding to file an appeal, has filed the appeal. For this further reason, the appeal has not been properly filed and must be rejected.¹

ORDER: The appeal is rejected.

¹ 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 the Service) 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.