

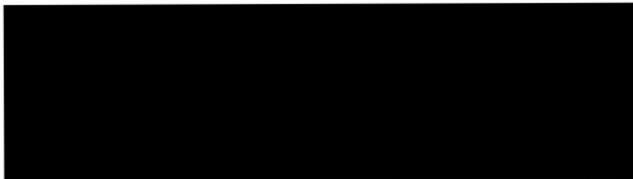


U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 29 2006
WAC 96 202 51892

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

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)

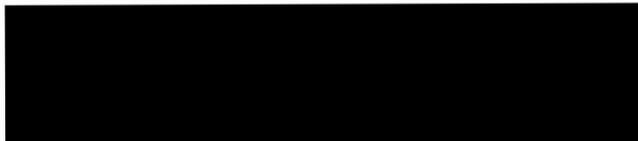
ON BEHALF OF PETITIONER:



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 Director, California Service Center, based on evidence showing the beneficiary's claimed employment history to be fraudulent, revoked approval of the employment-based visa petition. 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 restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined, based on the evidence submitted and a consular investigation, that the beneficiary's claimed employment history is fraudulent and revoked the petition accordingly.

The petitioner signed a Form G-28 Notice of Entry of Appearance recognizing an attorney as his attorney of record. A different attorney filed the Form I-290B appeal in this matter, along with a Form G-28 Notice of Entry of Appearance and a brief. The Form G-28 submitted by that second attorney is not signed by a representative of the petitioner, but by the beneficiary. Further, on the Form I-290B, the new attorney states that he represents the beneficiary. The record contains no evidence that the petitioner has agreed to be represented by this new attorney.

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 prohibit a beneficiary of a visa petition, or the beneficiary's representative acting on a beneficiary's behalf, from filing an appeal. The submissions do not indicate that the petitioner agreed to be represented by this second attorney but, rather, make clear that counsel represents the beneficiary. As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

A copy of this decision will be provided to the petitioner's last known counsel of record. A courtesy copy will also be provided to the beneficiary's counsel.

Therefore, the appeal has not been properly filed, and must be rejected.

ORDER: The appeal is rejected as improperly filed.