



U.S. Citizenship
and Immigration
Services

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BoP

JAN 24 2007

FILE:

EAC 04 032 51842

Office: VERMONT SERVICE CENTER

Date:

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

CC: DONAL L SCHLEMMER
1815 H STREET NW STE 525
WASHINGTON DC 20005

DISCUSSION: The Director, Vermont Service Center, denied the employment-based visa petition that 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 cleaning service. It seeks to employ the beneficiary permanently in the United States as a Janitorial Services Supervisor. 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 that the petitioner had not established that the beneficiary has the requisite experience as described on the Form ETA 750.

The appeal in this matter was filed by an attorney. The record contains four G-28 Notice of Entry of Appearance forms showing that the attorney represents the beneficiary, but none showing that he represents the petitioner. Further, on the I-290B appeal form counsel indicated that he represents the beneficiary, rather than the petitioner.

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 [Citizenship and Immigration Services (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 [CIS] has accepted will not be refunded.

The appeal was not filed by the petitioner, nor by any entity with legal standing in this proceeding, but by the beneficiary. 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 her 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.¹

¹ Counsel submitted no additional evidence on appeal. Counsel's argument on appeal reads, in its entirety,

- 1.- The denial violates Section 8 CFR Section 245.2(a)(2)(i) which allows concurrent I-485 & I-140 as long as a visa number is available.(see attached)
- 2.- The CIS has raised a different ground of denial when the applicant showed that the prior "visa" unavailability" (sic) ground previously by (sic) the Service (sic) was incorrect.
- 3.- The denial itself does not fully comply with 8C.F.R. Section 103.3(a)(1)(i) requirement as to clarity and specificity contradicts 8CFR(i) Section (i) requirement as to clarity and specificity as it contradicts 8CFR Section 245.2(a)(2)(1).
- 4.- The I-140 is still pending and "has been retained for processing by this (CIS) office" (see November 14, 2003 Notice enclosed).

The appeal does not address the issue of whether the beneficiary has the experience requisite to the proffered position, which was the basis of the decision of denial. If the appeal in this matter had been properly filed by the petitioner, rather than the beneficiary, it would be summarily dismissed as frivolous pursuant to 8 C.F.R. § 103.3(a)(1)(v).