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U.S. Citizenship
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FILE: [Redacted]
SRC 04 121 50745

Office: TEXAS SERVICE CENTER

Date: JUN 01 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the preference visa petition that is now before the Administrative Appeals Office (AAO) 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 chef. As required by statute, a Form ETA 750 Application for Alien Employment Certification certified by the Department of Labor accompanies 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. The director also noted that the approved labor certification was not issued to the current petitioner. The director denied the petition accordingly.

The attorney recognized above represented the petitioner in the submission of the Form I-140 petition. That attorney submitted a Form G-28 Notice of Entry of Appearance duly executed by a representative of the petitioner. A different attorney submitted the instant appeal. The beneficiary signed a Form G-28 Notice of Entry of Appearance recognizing that attorney as counsel. Further, the beneficiary's counsel stated on the Form I-290B appeal that he represents the beneficiary. On the subsequently submitted brief the attorney stated that he is "Attorney for Petitioner/Beneficiary," but counsel's statement is insufficient to demonstrate that the petitioner has recognized him as its counsel or has acquiesced in filing this appeal. Today's decision will be furnished only to the petitioner and its attorney of record.

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.

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