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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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File: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 27 2008**  
EAC 05 129 50728

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

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to  
Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

IN BEHALF OF PETITIONER:  
[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Rob Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting Director (the director) of the Vermont Service Center denied the preference visa petition that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petition seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. The employer is a hospital. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petition is based on the assertion that the beneficiary qualifies for Schedule A, Group I labor certification pursuant to 20 C.F.R. § 656.5(a). The director determined that the petitioner had not established that it had submitted a Prevailing Wage Determination (PWD), issued by the State Workforce Agency (SWA) having jurisdiction over the proposed area where the job opportunity exists. The director denied the petitioner accordingly.

The record of proceeding contains a properly executed Form G-28 signed by the employer and the beneficiary of the visa petition. However, Part 8 of the Form I-140, Immigrant Petition for Alien Worker, "Petitioner's signature," is signed by the beneficiary not the employer,<sup>1</sup> and the Form I-290B, Notice of Appeals to the Administrative Appeals Office, states that counsel is representing the beneficiary, not the employer, in this proceeding.

Review of the record shows that the petition has not been properly filed, and therefore there is no legitimate basis to continue with this proceeding.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record.

The regulation at 20 C.F.R. § 656.15(a) states in pertinent part:

*Filing application.* An employer must apply for a labor certification for a Schedule A occupation by filing an application in duplicate with the appropriate DHS office, and not with an ETA application processing center.

The regulation at 8 C.F.R. § 204.5(c) states in pertinent part:

*Filing petition.* Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The regulation at 8 C.F.R. § 204.5(l)(1) states in pertinent part:

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<sup>1</sup> We acknowledge that Part 9, "Signature of person preparing form, if other than above," is signed by the employer. Part 9, however, unlike Part 8, is not signed under penalty of perjury. The individual who signs Part 8 must be considered the petitioner.

Any United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(3) as a skilled worker, professional, or other (unskilled) worker.

In the instant case, the Form I-140 was signed by the beneficiary as the petitioner. As noted above, the beneficiary is not eligible to self-petition under section 203(b)(3), but must be petitioned for by an employer.<sup>2</sup>

The petition has not been properly filed by a United States employer. Therefore, we must reject the appeal.

**ORDER:** The appeal is rejected.

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<sup>2</sup> The regulation at 8 C.F.R. § 103.2(b)(8)(i) provides that “[i]f the record evidence establishes ineligibility, the application or petition will be denied on that basis.” Significantly, no prior notice is required under these circumstances.