



U.S. Citizenship
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Services

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FILE:

SRC 06 094 50203

Office: TEXAS SERVICE CENTER

Date:

MAR 21 2007

IN RE:

Petitioner:



PETITION:

Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

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.

Maia Plussa

Σ Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the preference visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be rejected. The AAO will return the matter for further action by the director.

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5). The director determined that the petitioner had failed to demonstrate a qualifying investment of lawfully obtained funds.

The appeal was filed by the alien self-petitioner's Certified Public Accountant. The record contains a Notice of Entry of Appearance as Attorney or Representative, Form G-28, signed by the alien self-petitioner purporting to designate his accountant as his representative. The Form G-28 does not establish the accountant's eligibility to appear either as an attorney, or as an accredited representative of an organization recognized and accredited by the Board of Immigration Appeals as defined in 8 C.F.R. §§ 103.2 and 292.1(a)(4). The accountant listed no location in which he was admitted to the practice of law, nor is he listed on the most recent Roster of Recognized Organizations and Accredited Representatives maintained by the Executive Office for Immigration Review. The procedures for accreditation of organizations and representatives are set forth in 8 C.F.R. § 292.2. The regulations do not permit "certified public accountants" to appear as representatives before USCIS.

On February 16, 2007, the accountant was advised of the above information and afforded 15 days in which to provide evidence of his eligibility to appear as a representative. As of this date, more than one month later, we have received no response. Thus, we affirm our conclusion that the accountant does not represent the alien self-petitioner in this proceeding.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states that, for purposes of appeals, certifications, and reopening or reconsideration, "affected party" (in addition to Citizenship and Immigration Services (CIS)) means the person or entity with legal standing in a proceeding. The regulation at 8 C.F.R. § 103.3(a)(2)(v) states that 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.

Here, the party that filed the appeal was not the petitioner, nor an attorney or accredited representative of the petitioner, but rather the alien's accountant. For the reasons discussed above, the accountant has no standing to file an appeal on the petitioner's behalf. We must, therefore, reject the appeal as improperly filed.

We note, at the same time, that the director sent the notice of decision not to the alien self-petitioner, but to the accountant, presumably because the record contains the above-mentioned Form G-28. That form, however, does not establish the accountant's eligibility to represent the alien self-petitioner. Thus, the director has never issued any relevant notices to the petitioner himself.

The regulation at 8 C.F.R. § 103.5a(a)(1) defines "routine service" as mailing a copy by ordinary mail addressed to a person at his last known address. The regulation at 8 C.F.R. § 103.5a(b) states that service by mail is complete upon mailing. Here, because the director addressed the notices to the accountant, rather than to the alien self-petitioner himself, the director has arguably never served the

notice of denial. Thus, the self-petitioning alien has never had the opportunity to file a timely appeal. The director must reissue the denial notice in order to give the actual petitioner that opportunity.

We note that, if the alien petitioner chooses to appeal the director's decision, statements from his accountant will be duly considered, albeit as witness statements rather than as the petitioner's own arguments. Because there is, as yet, no valid appeal in the record, we examine, here, neither the basis of the denial nor the merits of the appeal submitted by the accountant. We will duly consider those factors if and when the self-petitioning alien files a proper and timely appeal.

The appeal has not been filed by the petitioner, or by any entity with legal standing in the proceeding, but rather by the alien self-petitioner's accountant. Therefore, the appeal has not been properly filed, and must be rejected. The director must serve a newly dated copy of the decision, properly addressed to the petitioner. In doing so, the director may wish to raise concerns not expressed in her previous decision. Specifically, the director may wish to consider whether the petitioner has established a "new" commercial enterprise and, if not, whether he has created 10 "new" jobs.

ORDER: The appeal is rejected. The matter is returned to the director for the limited purpose of the reissuance of the decision to the alien self-petitioner.