

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



U.S. Citizenship  
and Immigration  
Services

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*identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy*

[Redacted]

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FILE: LIN 02 219 55239 Office: NEBRASKA SERVICE CENTER Date: JUL 20 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON 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.

*for* *Mari Johnson*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reconsider. The motion will be rejected.

The petitioner is a hotel that seeks to employ the beneficiary as an assistant manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation.

The beneficiary, not an authorized representative of the petitioner, signed the Form G-28, Entry of Appearance as Attorney or Representative that was submitted in conjunction with the motion. Citizenship and Immigration Services (CIS) regulations specifically state that a beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). As the beneficiary is not a recognized party, counsel is not authorized to file a motion. 8 C.F.R. § 103.3(a)(1)(iii)(B). Accordingly, the AAO will reject the appeal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

Additionally, the AAO notes that the motion was untimely filed. In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the complete motion within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the AAO issued the decision on November 12, 2003. It is noted that the director of the AAO properly gave notice to the petitioner that it had 33 days to file the motion. Although counsel dated the appeal December 11, 2003, it was received by CIS on December 22, 2003, or 40 days after the decision was issued. Accordingly, the appeal was untimely filed.

For this additional reason, the appeal must be rejected.

**ORDER:** The appeal is rejected.