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U.S. Citizenship
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FILE: WAC 06 267 54051 Office: CALIFORNIA SERVICE CENTER Date: SEP 25 2007

IN RE: Petitioner:
Beneficiary:

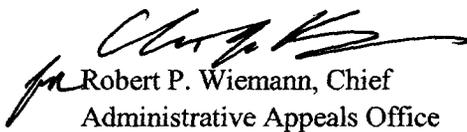
PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner seeks O-1 nonimmigrant classification of the beneficiary, as an alien with extraordinary ability under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i). [REDACTED] and Fitness Club in Berwyn, Pennsylvania, seeks to employ the beneficiary temporarily in the United States as a squash professional for a period of three years at an annual salary of \$65,464.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has received sustained national or international acclaim and is one of the small percentage who has risen to the very top of his field of endeavor.

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 Form I-129 petition identifies [REDACTED] and Fitness Club as the employer and the petitioner. 8 C.F.R. § 103.2(a)(2), requires that the petitioner must sign the petition. In this instance, no official of [REDACTED] and Fitness Club signed Form I-129. The only signature on that form is that of attorney [REDACTED] who represents the employer. [REDACTED] did not sign Part 7, "Signature of person preparing form." Rather, he signed Part 6, "Signature," thereby taking responsibility for the petition. [REDACTED] has not claimed to be an official of [REDACTED] and Fitness Club. His correspondence is on [REDACTED] letterhead, and next to his signature on Form I-129, he provided the law firm's telephone number.

The regulations do not permit an attorney to sign Form I-129 on behalf of a United States employer; by signing Part 6 of the petition form, [REDACTED] became the *de facto* petitioner.

An O-1 or O-2 petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent. 8 C.F.R. § 214.2(o)(2)(i). 8 C.F.R. § 214.2(o)(2)(iv)(E) sets forth the circumstances under which a United States agent may file a petition:

Agents as petitioners. A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States agent may be: The actual employer of the beneficiary, the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by an agent is subject to the following conditions:

- (1) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.

(2) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary, if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(3) A foreign employer who, through a United States agent, files a petition for an O nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

The above regulations do not indicate that [REDACTED] is an "agent" with standing to file the petition. Furthermore, the record does not show that workers in the beneficiary's field are traditionally self-employed, or that the beneficiary seeks short-term employment with numerous employers. Therefore, the terms of employment in this proceeding do not trigger the regulatory provisions relating to agents.

The petition has not been properly filed because: 1) the record does not show that [REDACTED] is the authorized agent of the [REDACTED] and Fitness Club pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E); and 2) no authorized official of the [REDACTED] and Fitness Club has signed the petition. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition.

As the petition was never properly filed in the first place, the director should not have accepted the petition for adjudication. The director's erroneous acceptance of the improperly filed petition does not compel the AAO to render a decision on the merits of the petition. It would be absurd to suggest that we, or any agency, must treat acknowledged errors as binding precedent. *See Sussex Engr. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

The petition has not been filed by a United States employer. Even if the employer's attorney was its authorized agent (which is not the case), the nature of the employment offer precludes invoking the regulatory provisions relating to agents. Therefore, the petition has not been properly filed, and we must reject the appeal.

ORDER: The appeal is rejected.