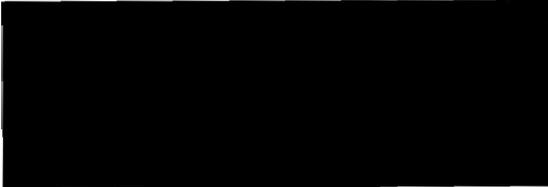




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy

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FILE [redacted] Office: TEXAS SERVICE CENTER Date:
SRC 03 246 51096

JUN 28 2006

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

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 on appeal. The appeal will be summarily dismissed.

The petitioner leases and sells water dispensers. It seeks to employ the beneficiary permanently in the United States as a secretary. 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 and denied the petition accordingly.

The petitioner's counsel, duly recognized in a Form G-28 Notice of Entry of Appearance executed by the petitioner, submitted a Form I-290B appeal in this matter. In the section reserved for the basis of the appeal, counsel inserted, "Adjudicating officer failed to consider supplemental evidence submitted." On the form appeal counsel indicated that he would provide a brief or evidence within 30 days. With that form appeal the petitioner submitted a statement headed Motion to Reopen. In that statement counsel stated that the petition had been denied and that the appeal was timely submitted, but offered no substantive argument. Counsel submitted no appeals brief or additional evidence either with the form appeal or subsequently.

On April 7, 2006 this office sent counsel a facsimile transmission asking whether he had submitted any such information, argument, or documentation. Another attorney responded to that facsimile. That other attorney asserted that he now represents both the petitioner and the beneficiary, and that Forms G-28 Notice of Entry of Appearance submitted support this assertion. In fact, the record contains a Form G-28 executed by the beneficiary, but no such form executed by the petitioner recognizing substituted counsel.¹ The evidence, therefore, contains no evidence that the petitioner has consented to be represented by substitute counsel.² The decision will be furnished only to the petitioner and its counsel of record.

Counsel's statement on appeal contains no specific assignment of error. Alleging that the director erred in some unspecified way is an insufficient basis for an appeal.

¹ 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.

Only the affected party is permitted to file an appeal. 8 C.F.R. § 103.3(a)(2)(i). The beneficiary is not an affected party in this proceeding and has no right to appeal. Further, the beneficiary has no ability to substitute an attorney for the counsel acknowledged by the petitioner.

² This office notes that even if the petitioner agreed, on a duly executed Form G-28, to be represented by substituted counsel that would not extend the period during which the appeal could be supplemented. The facsimile transmission of April 7, 2006 made clear that it was enquiring whether a brief had been timely filed, and was not according the petitioner or counsel additional time during which to file a brief. In his letter the ostensible substituted counsel asked for an additional 30 days to respond to the decision of denial. Even if this office recognized the substituted attorney as the petitioner's attorney of record any evidence he submitted, long after the period for supplementing the appeal had lapsed, would not be considered.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: “An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.”

Counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal and the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.