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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 02 194 52529 Office: CALIFORNIA SERVICE CENTER Date: AUG 0 9 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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: 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, Director
Administrative Appeals Office

CC: [redacted]

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner 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 petitioner is a sewing manufacturer. It seeks to employ the beneficiary permanently in the United States as a sewing supervisor. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the continuing financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

The record shows that an attorney or representative has filed the appeal without a proper entry of appearance executed on Form G-28 showing that he represents the petitioner. The only G-28 contained in the record is dated April 12, 2003 and is signed only by the beneficiary. On the I-290B, counsel indicated only that he represented the beneficiary. The appeal is filed on behalf of the beneficiary.

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states in pertinent part:

> (2) *Appeal by attorney or representative without proper Form G-28- (i) General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such case, any filing fee [CIS] has accepted will not be refunded regardless of the action taken

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) also states in pertinent part:

> *Meaning of Affected Party.* For purposes of this section and §§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.

The regulation at 8 C.F.R. § 103.3(a)(2) further states in relevant part:

> (v) *Improperly filed appeal- (A) Appeal filed by person or entity not entitled to file it- (1) Rejection without refund of filing fee.* 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.

The attorney filing the appeal represents the beneficiary. The beneficiary is not entitled to file an appeal. As noted above, the record contains no entry of appearance (Form G-28), signed by the current petitioner, designating this attorney as the petitioner's representative.

ORDER: The appeal is rejected.