U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

B6

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC-01-283-50530 Office: CALIFORNIA SERVICE CENTER Date: NOV 09 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: 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.

for Michael Valdez

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The matter is again before the AAO on a motion to reconsider. The motion will be rejected.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. The instant motion was made in the form of a letter dated June 26, 2003 from the beneficiary's counsel to the AAO.

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 the Service) 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)(v) states:

> 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 the Service has accepted will not be refunded.

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) states in pertinent part as follows.

> A motion shall be submitted on Form I-290A, and may be accompanied by a brief. It must be – (A) In writing an signed by the affected party or the attorney or representative of record, if any . . . .

The motion has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the beneficiary, though counsel. Therefore, the motion has not been properly filed, and must be rejected.

ORDER: The motion is rejected.