



U.S. Citizenship
and Immigration
Services

B2

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



FILE: LIN 04 013 5109 Office: NEBRASKA SERVICE CENTER Date: APR 07 2006

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The petitioner is a physical therapy clinic that seeks to classify the beneficiary, a physical therapy assistant, as an "alien of extraordinary ability" pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the beneficiary asserts that he filed the wrong paperwork and submits a new self-petition seeking classification as an "other worker" pursuant to section 203(b)(3)(iii). Only an employer can file a petition seeking benefits pursuant to section 203(b)(3) of the Act. 8 C.F.R. §§ 204.5(c), (l)(1). No provision allows an alien to self-petition under that classification. In addition, the regulation at 8 C.F.R. § 204.5(l)(3)(i) requires that petitions seeking to classify an alien pursuant to section 203(b)(3) of the Act be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation, or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program. Finally, the petitioner provides no legal authority that would allow an employer or an alien to seek a new classification on appeal.

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

ORDER: The appeal is rejected.