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U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 03 124 54483 Office: VERMONT SERVICE CENTER Date: **AUG 15 2006**

IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to  
Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

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 preference visa petition was denied by the Director, Vermont 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 professional or skilled worker. The petitioner is a fencing company. It seeks to employ the beneficiary as a foreman, installation of fence. As required by statute, the petition was accompanied by certification from the Department of Labor (Form ETA-750). However, the certification was initially approved for a different petitioner and a different job than those presented on appeal. In addition, a different attorney represented the original petitioner. The director denied the petition because he determined that the petitioner had not established its ability to pay the proffered wage from the priority date and continuing to the present.

The record shows that the person filing the appeal is the new attorney. However, the new attorney filed a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the beneficiary, and not the petitioner. Therefore, the attorney is representing the beneficiary.

The regulation at 8 C.F.R. § 103.3(a)(3)(B) 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 the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

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

*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 a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

As the person (counsel representing the beneficiary) filing the appeal is not an affected party, the appeal is considered to be improperly filed, and, therefore, must be rejected.

In addition, on appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. *See Matter of Michelin Tire Corporation*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).

Furthermore, the regulation at 20 C.F.R. § 656.30(c)(2) provides:

A labor certification involving a specific job offer is valid only for the particular job opportunity, the alien for whom certification was granted, and for the area of intended employment stated on the Application for Alien Employment Certification form.

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In the present case, the job offer is new, the petitioner is new, and the area of intended employment is new. Therefore, the new petitioner will need to file a new Form I-140, Immigrant Petition for Alien Worker, and obtain a new Form ETA-750. In light of the above, the petition must be rejected.

**ORDER:** The appeal is rejected.