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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER
EAC 04 158 51807

Date: APR 04 2007

IN RE: Petitioner:
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:



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

DISCUSSION: The Director, Vermont Service Center, denied the preference visa petition that is now before the Administrative Appeals Office on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

The petitioner is a medical office. It seeks to employ the beneficiary permanently in the United States as a medical record technician. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the beneficiary had entered into a sham marriage in an attempt to evade immigration laws and denied the petitioner pursuant to Section 204(c) of the Immigration and Nationality Act (the Act).

An attorney filed the appeal in this matter. The attorney indicated on the appeal form that she represents the beneficiary. Further, the record contains two G-28 Notices of Entry of Appearance indicating that the attorney who filed the appeal represents the beneficiary. The record does not contain a G-28 showing that the attorney who filed the appeal represents the petitioner in this case, nor any other evidence indicating that the petitioner has consented to be represented by the attorney who filed the appeal.

The record of proceeding contains a properly executed Form G-28 executed by the petitioner's representative and another attorney. Although that other attorney does not appear to have been involved with the appeal, whether or not the petitioner obtained new counsel is unknown. Therefore, a copy of this decision will be provided to the petitioner's last known counsel of record.

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.

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 was not filed by the petitioner, nor by any entity with legal standing in this proceeding, but by the beneficiary. The beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). Only the affected party is permitted to file an appeal. 8 C.F.R. § 103.3(a)(2)(i).

Citizenship and Immigration Services' (CIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

As the beneficiary and his representative are not recognized parties, counsel for the beneficiary is not authorized to file an appeal. 8 C.F.R. § 103.3(a)(2)(v)(A) and (B). Therefore, the appeal has not been properly filed, and must be rejected.

ORDER: The appeal is rejected as improperly filed.