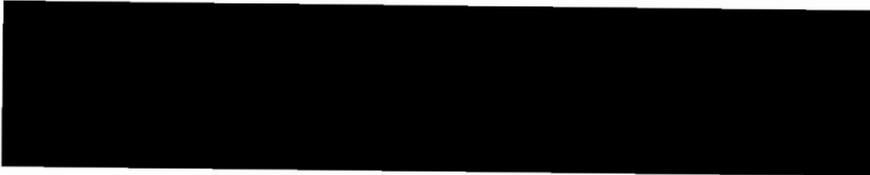




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
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FILE: [REDACTED]
SRC 05 239 52049

Office: TEXAS SERVICE CENTER Date: **MAY 22 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, Chief
Administrative Appeals Office

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

The petitioner is a wholesaler. It seeks to employ the beneficiary permanently in the United States as a sales manager. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanied the petition. The acting director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and that it had not established that the beneficiary had met the minimum education requirement as stated on the approved Form ETA 750 labor certification. The acting director and denied the petition accordingly.

The petitioner is represented by counsel in this matter, which is evidenced by a Form G-28 Entry of Appearance executed by the petitioner's representative and incorporated into the record. The petitioner's counsel's name and address is set out above.

The appeal in this matter, however, was not submitted by the petitioner or by petitioner's counsel. The attorney who submitted the appeal stated on it that he represents the beneficiary. Further, although the record contains a Form G-28 recognizing him as counsel, that Form G-28 was executed by the beneficiary, rather than by the petitioner. The record contains no indication that the petitioner consented to filing the appeal or consented to be represented by the attorney who filed the appeal.

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 [CIS] 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 beneficiary and his representative are not recognized parties, counsel 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.¹

¹ The AAO notes that the decision of denial was issued on December 22, 2005. The appeal was submitted on January 26, 2006. Had the appeal been filed by the petitioner or the petitioner's representative it would have been rejected as late pursuant to 8 C.F.R. § 103.3(a)(2)(i) and 8 C.F.R. § 103.5a(b).