U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAY 07 2009

SRC 07 800 25036

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B,Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petitioner's employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a business and information technology services firm, and seeks to employ the beneficiary permanently in the United States as a software engineer. As required by statute, the petition filed was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had signed the Form I-140 petition as required by regulation. The director denied the petition accordingly.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. *See also* 8 C.F.R. § 204.5(l)(3)(ii)(b).

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who, at the time of petitioning for classification under this paragraph, are professionals.

Review of the record shows that the petition has not been properly filed, and therefore there is no legitimate basis to continue with this proceeding.

The Form I-140 petition, which was "e-filed," identifies Standard Focus, Inc. as the employer and the petitioner. The regulation at 8 C.F.R. § 103.2(a)(2) requires that the petitioner sign the petition. In this instance, no authorized employee or officer of Standard Focus, Inc. signed Form I-140.[1] The only signatures on Form I-140 are that of the beneficiary and [redacted] who represents the petitioner as counsel. The beneficiary signed Part 8 of the Form I-140, "Petitioner's Signature," thereby attempting to file the petition on behalf of the actual United States employer. However, the regulations do not permit the beneficiary, who is not the petitioner, to sign Form I-140 on behalf of a United States employer.

The regulation at 8 C.F.R. § 204.5(c) states:

> *Filing petition.* Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's

[1] On April 14, 2008, counsel submits a new Form I-140 endorsed on March 31, 2008 by [redacted] in his capacity as President of the petitioner. However, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988). A petitioner must establish the elements for the approval of the petition at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

> behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The regulation at 8 C.F.R. § 103.2(a)(2) states:

> *Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the [USCIS] is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

No regulatory provision waives the signature requirement for a petitioning United States employer or permits a petitioning United States employer to designate the beneficiary to sign the petition on behalf of the United States employer. The petition has not been properly filed because the petitioning United States employer, Standard Focus, Inc., did not sign the petition. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition.

Counsel notes in his brief on appeal that the signature by the beneficiary was a clerical error and that the amendment proposed to the I-140 is not "material" to the petition, based on the specifics of this case. Counsel claims that "based on a comparative analysis of both the changes in *Matter of Izummi,* 21 I&N, Dec. 169 (Assoc. Comm. 1998) and as outlined in relation to employment based H-1B petitions, the amendment of the petition in this case cannot be accepted as a material change. Neither the underlying qualifying documentation of the approved Labor Certification, the beneficiary's employment with the petitioner, the job location, nor the job duties is being changed." Counsel cites *INS Memorandum, T. Alexander Aleinkoff, Exec. Assoc. Comm., "Amended H-1B Petitions," HQ 70/6.28-P, Aug. 22, 1996* in support of his claims.

Counsel is mistaken. In the instant case, we are not dealing with a properly filed petition, but one that was never properly filed and which should have been rejected at the outset. Even if nothing has changed regarding the beneficiary's employment, the fact remains that the beneficiary is not a United States employer, and, therefore, is not eligible to self-petition under 8 C.F.R. § 204.5(c). A clerical error does not overcome an improperly filed petition. The petitioner must file a new I-140 with appropriate signatures, fees, etc.

The petition has not been properly filed by a United States employer. Therefore, we must reject the appeal.

ORDER: The appeal is rejected.