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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B6

MAY 21 2009

FILE:

[REDACTED]
WAC 01 290 57613

Office: CALIFORNIA SERVICE CENTER

Date:

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:

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the preference visa petition. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). 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 pizza/international dishes franchiser. It seeks to employ the beneficiary permanently in the United States as a foreign specialty cook. Accompanying the petition, the petitioner submitted an Application for Alien Employment Certification Form ETA 750 as certified by the U.S. Department of Labor (DOL).

The director determined that neither the petitioner nor the beneficiary qualify for the benefit sought because the instant petition was approved based on a fraudulent Form ETA 750.

The appeal was filed March 2, 2007, by the beneficiary as captioned "In the matter of [the beneficiary]" signed by [REDACTED], who upon the Form I-290B indicated that "I am an attorney or representative, and I represent [the beneficiary]." Submitted with the appeal form was the beneficiary's Form G-28 signed by [the beneficiary] who signed the form consenting to the representation of [REDACTED]. There is no Form G-28 in the record prepared by attorney [REDACTED] which states the attorney represents the petitioner, or signed by the petitioner for [REDACTED] to represent them.

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 [USCIS]) means the person or entity with legal standing in a proceeding. *It does not include the beneficiary of a visa petition* [emphasis added].

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, or 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).

As the beneficiary and her representative are not recognized parties to the action, the petitioner has not authorized the 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.