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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



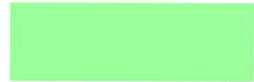
U.S. Citizenship
and Immigration
Services



DATE: JUN 11 2013

OFFICE: NEBRASKA SERVICE CENTER

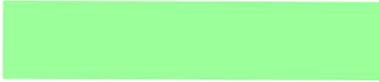
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IN RE:

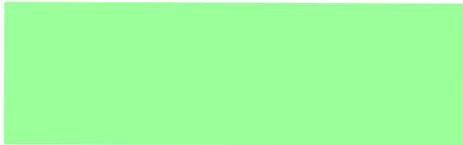
Petitioner:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner describes itself as a grocery store. It seeks to permanently employ the beneficiary in the United States as a produce manager. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

The director's decision denying the petition concludes that the petitioner failed to establish the beneficiary's qualifications for the proffered position and failed to establish that the petitioner had the ability to pay the proffered wage as of the priority date.

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 AAO issued a request for evidence (RFE) on June 1, 2012. In the RFE, the AAO noted that [REDACTED] signed the instant Form I-140 and that the record contained inconsistent information regarding Mr. [REDACTED] connection with the petitioner's company. In response to the RFE, the petitioner submitted a letter dated June 29, 2012 and signed by [REDACTED] stating that "on March 22, [REDACTED] under Mr. [REDACTED] as an officer was purchased by [REDACTED] under Mr. [REDACTED] as Chief Executive Officer." Ms. [REDACTED] further states that Mr. [REDACTED] was an "officer of [REDACTED] and Mr. [REDACTED] was an officer of [REDACTED] these two names and two entities are not affiliated."

The record contains a purchase agreement between [REDACTED] and [REDACTED] dated March 22, 2004. Therefore, the sale of the company occurred in 2004. Four years later, on April 4, 2008 a Form I-140, Immigrant Petition for Alien Worker, signed by Mr. [REDACTED] was filed on behalf of [REDACTED]. Therefore, an individual other than an authorized official of [REDACTED] signed Part 8 of the Form I-140, in the block provided for "Petitioner's Signature," thereby seeking to file the petition on behalf of the actual United States employer. The regulations do not permit any individual 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) provides:

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 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. § 204.5(a)(1) provides that a petition is properly filed if it is accepted for processing under the provisions of 8 C.F.R. § 103. The regulation at 8 C.F.R. § 103.2(a)(2) provides:

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 BCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

An earlier version of the regulation at 8 C.F.R. § 204.1(d), as in effect in 1991, provided, in pertinent part:

Before the petition may be accepted and considered properly filed, the petitioner *or authorized representative* shall sign the visa petition (under penalty of perjury) in the block provided on the form. (Emphasis added.)

The regulation at 8 C.F.R. § 204.1(d) no longer includes language that would allow an authorized representative to sign a petition, although we acknowledge that this provision now relates only to immediate relative and family based petitions. In contrast, the filing requirements for employment-based immigrant petitions are now found at 8 C.F.R. § 204.5(a). The regulation at 8 C.F.R. § 204.5(a)(1) provides that such petitions must be accepted for processing under the provisions of 8 C.F.R. § 103. As stated above, the regulation at 8 C.F.R. § 103.2(a)(2) provides that the petitioner must sign the petition and does not include the “or authorized representative” language that previously applied to Forms I-140 until 1991. Had legacy Immigration and Naturalization Service, now USCIS, intended to continue to allow authorized representatives to sign Form I-140 petitions, the language expressly allowing them to do so would not have been removed.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The petition has not been properly filed because the petitioning U.S. employer, [REDACTED] 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. While the Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at 3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

USCIS and legacy INS have required that an authorized employee of the U.S. petitioning employer must sign the Form I-140 petition on behalf of the petitioning employer since 1991 when legacy INS removed the “or authorized representative” language. As will be discussed in more detail below, the

requirement for a signature *under penalty of perjury* cannot be met by a “Power of Attorney” authorized signature. Practically, the signature requirement reflects a genuine Form I-140 program concern regarding the validity of the permanent job offers contained in Form I-140 petitions. To this end, the employer’s signature serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

The signature line on the Form I-140 for the petitioner provides that the petitioner is certifying, “under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct.” To be valid, 28 U.S.C. § 1746 requires that declarations be “subscribed” by the declarant “as true under penalty of perjury.” *Id.* In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: “Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury.” 18 U.S.C. § 1621.

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration “for” another. Without the petitioner’s actual signature as declarant, the declaration is completely robbed of any evidentiary force. *See In re Rivera*, 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

Counsel states in the response to the AAO’s RFE that, “Mr. [REDACTED] an authorized representative of [REDACTED] is aware of the I-140 that was filed on behalf of Mr. [REDACTED] and wishes to continue with the I-140 petition as the successor of [REDACTED]” This cannot be reconciled with the letter from Ms. [REDACTED] which states that Mr. [REDACTED] is not affiliated with the petitioner. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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

ORDER: The appeal is rejected.