

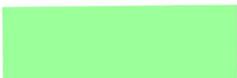
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

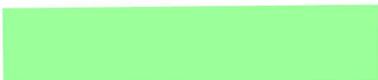
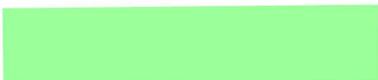


U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 17 2013** OFFICE: NEBRASKA SERVICE CENTER

FILE: 

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,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motions will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The petitioner describes itself as an apparel design, production and retail company. It seeks to permanently employ the beneficiary in the United States as a production planner. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the marriage fraud bar under section 204(c) of the Act applies to the case and denied the petition accordingly.

The record of proceeding contains a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, for the representative of the beneficiary. Additionally, the Form I-290B, Notice of Appeal or Motion, was signed by the same representative and only referenced the beneficiary. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically prohibits a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. There is no evidence in the record that the petitioner consented to the filing of the motion to reopen and reconsider.¹

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

As a threshold issue before the AAO can adjudicate the subject matter of the appeal, we must determine whether the beneficiary has legal standing to appeal in this proceeding.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B), in pertinent part, states,

For purposes of this section and §§ 103.4 and 103.5 of this part, affected party (in addition to the Service) means the person or entity with legal standing in a proceeding. **It does not include the beneficiary of a visa petition.** (emphasis added).

Further, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1) states, "An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed." The explicit language of the

¹ On April 19, 2013, the AAO faxed a letter to the petitioner requesting that a Form G-28 be signed and submitted; the fax number for the petitioner was obtained by calling Mr. [REDACTED] Human Resources Manager. No response was received.

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

regulations noted above suggests that the beneficiary and/or her counsel would not have legal standing and would not be authorized to file the appeal in this matter.

Here, the motion to reopen and reconsider was authorized by the beneficiary and filed by counsel for the beneficiary, and no evidence in the record suggests that the petitioner consented to the filing of the motions. Thus, the beneficiary is not entitled to pursue this proceeding. As no evidence of record suggests that the original petitioner consented to the filing of the motions, the Form I-290B was improperly filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1) and must be rejected.

Because the motions are rejected, we will not elaborate on whether that the marriage fraud bar under section 204(c) of the Immigration and Nationality Act (the Act) applies to the case.

ORDER: The motions to reopen and reconsider are rejected as improperly filed. The director's decision to revoke the approval of the petition remains undisturbed.