

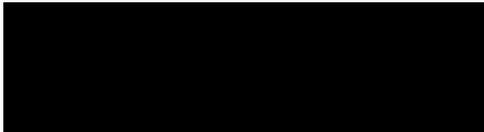
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U.S. Citizenship
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Services

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FILE: WAC 03 208 52429 Office: CALIFORNIA SERVICE CENTER Date: **JAN 24 2006**

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF BENEFICIARY:

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based visa petition. Counsel for the beneficiary subsequently submitted a motion to reopen or reconsider, which the director dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A).

The petitioner filed the immigrant petition seeking to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of California that is engaged in the import and export of food products. It seeks to employ the beneficiary as its director-chief executive officer. The director denied the petition concluding that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On May 3, 2005, counsel filed Form I-290A, on which he noted his representation of the beneficiary, and submitted a brief in support of the motion to reopen or reconsider. The director dismissed the motion stating that pursuant to the regulation at section 8 C.F.R. § 103.5(a), a motion shall be signed by the petitioner, the affected party in the instant matter, or the attorney or representative of record.¹ The director noted that the term "affected party" does not include the beneficiary of a visa petition.

Counsel filed Form I-290B, Notice of Appeal, on July 12, 2005, claiming:

We disagree with the California Service Center's decision that a motion to reopen shall be in writing and signed by the affected party or the attorney or representative of record. We had attached a new G-28 with the original signature of the Petitioner. No where in the rules it says [sic] that the petitioner does not have a right to change their attorney for filling [sic] of Motion to Reopen/Reconsider. Whenever a Form G-28 is attached that attorney's office becomes the attorney of record. Therefore, we request that you transfer this entire file to the Office of AAO for their opinion on this issue and the issue of initial denial.

Counsel indicated on Form I-290B that he represented the beneficiary. Counsel also attached Form G-28, Entry of Appearance as Attorney or Representative, which had been signed by the beneficiary and which identified counsel as the representative of the beneficiary in the filing of the instant appeal. The AAO notes that, despite counsel's claim on appeal, the record does not contain a completed Form G-28 identifying counsel as the petitioning entity's attorney or representative of record. Neither document identifies the petitioner as a represented party. 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 a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). As the beneficiary is not a recognized party, counsel is not authorized to file an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B).

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

ORDER: The appeal is rejected.

¹ As clarification, the AAO notes that the motion to reopen and reconsider was filed by new counsel who did not submit a completed Form G-28 identifying his representation of the petitioning entity.