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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**



B4

DATE:

DEC 09 2011

OFFICE: TEXAS SERVICE CENTER

FILE:

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 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The petitioner is a Texas corporation that seeks to employ the beneficiary as its general manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. After reviewing the evidence submitted, the director denied the petition based on the finding that the petitioner failed to establish that it has the ability to pay the beneficiary's proffered wage.

The beneficiary filed the only documents submitted on appeal, which are a Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) signed by the beneficiary and a Notice of Appeal or Motion (Form I-290B) also signed by the beneficiary. The record of proceeding does not contain a Form G-28 signed by the petitioner for the beneficiary's counsel. Rather, the Form G-28 that was submitted with the appeal indicates that counsel is representing the beneficiary as the applicant. The Form G-28 was not marked to show that counsel would also represent the petitioner and the petitioner's name was not included on the Form G-28.

USCIS 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). Moreover, the regulations at 8 C.F.R. § 103.3(a)(1)(iii)(b) specifically state that a beneficiary of a visa petition is not an affected party and does not have any legal standing in a proceeding. As the beneficiary and his representative have no legal standing in this proceeding, counsel for the beneficiary is not authorized to file the appeal on behalf of the petitioner, and it must therefore be rejected as improperly filed. 8 C.F.R. § 103.3(a)(1)(iii)(B); 8 C.F.R. § 103.3(a)(2)(v)(A)(1); 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i).

Even if the Form I-290 had been properly filed by the petitioner, the appeal would nevertheless be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the service center director issued the decision on September 29, 2009. The service center director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

Although the petitioner attempted to submit the Form I-290B on November 6, 2009, the appeal was returned to the petitioner because it was not properly filed with the required filing fee. The petitioner then submitted the Form I-290B with the proper fee and it was received on December 7, 2009, or 69 days after the decision was issued. Therefore, in addition to its improper filing, the appeal was untimely filed.

ORDER: The appeal is rejected.