



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY



BC

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **OCT 26 2005**
SRC 03 122 50405

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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)

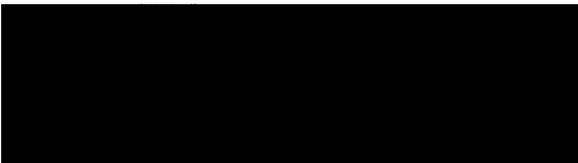
ON BEHALF OF PETITIONER: N/A

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.

A handwritten signature in black ink, appearing to read "Michael Valdez".

Robert P. Wiemann, Director
Administrative Appeals Office



DISCUSSION: The Director, Texas Service Center, denied the preference visa petition that is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. The director determined that the petitioner had not established that a job offer was open to the beneficiary and that the beneficiary has the two years experience required by the approved Form ETA 750. The director also noted that the petitioner had failed to complete the Form I-140 labor petition and had failed to request that the beneficiary named on the Form I-140 petition be substituted for the beneficiary named on the Form ETA 750 labor certification.

The record contains four Forms G-28, Entry of Appearance as Attorney or Representative. All four of those entries of appearance show that the attorney who filed the appeal in this case represents the beneficiary. Although counsel stated, on the Form I-290B appeal form, that he represents both the beneficiary and the petitioner, the record does not indicate that the petitioner has ever consented to be represented by counsel.

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 Citizenship and Immigration Services (CIS)] means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Although counsel states that he represents the petitioner as well as the beneficiary, no Form G-28 was submitted signed by both counsel and the petitioner's authorized representative.

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 CIS has accepted will not be refunded.

The appeal was not filed by the petitioner, nor 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 his representative are not recognized parties, counsel is not authorized to file an appeal. Therefore, the appeal has not been properly filed, and must be rejected.

ORDER: The appeal is rejected as improperly filed.¹

¹ The AAO notes that the appeal would alternatively be summarily dismissed. As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. In his appeal, counsel states, "At this time we are requesting an extension of 90 days to submit a brief due to the two hurricanes [redacted] and [redacted] that struck Florida in October. Neither my client nor I

were able to fully prepare the response to the Request for Evidence therefore we would like this extension to be granted.”

Although more than eight months have passed since counsel submitted that appeal no additional argument has been submitted. No documentation or other evidence accompanied that appeal and none has subsequently submitted.

Counsel's statement on appeal contains no specific assignment of error. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: “An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.”

If the appeal in this case had been properly submitted by the petitioner or his attorney or representative, it would have been dismissed as frivolous pursuant to 8 C.F.R. § 103.3(a)(1)(v).