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FILE: SRC 01 150 56276 Office: NEBRASKA SERVICE CENTER Date: MAY 10 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

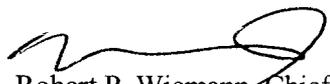
PETITION: Immigrant Petition for Alien Worker as an Other Worker Pursuant to Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(iii)

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the AAO on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed this immigrant petition seeking to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii).

The director denied the petition on April 10, 2001, observing that the beneficiary himself had signed the immigrant petition.¹ The director noted that there is no provision under the regulations governing the third preference category that allows a beneficiary to petition for himself or herself.

The petitioner filed the instant appeal on February 4, 2002. The Form I-290B, Notice of Appeal, contains the following statement: "The individual concerned is a responsible and law-abiding person. He is a good worker and good family individual." The petitioner did not submit a separate brief or evidence in support of the appeal.

Section 203(b) of the Act states in pertinent part:

(3) Skilled workers, professionals, and other workers

(A) In general – Visas shall be made available. . . to the following classes of aliens who are not described in paragraph (2):

* * *

(i) Other Workers – Other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

* * *

(B) Labor certification required – An immigrant visa may not be issued to an immigrant under subparagraph (A) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 1182(a)(5)(A) of this title

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(3)(A)(iii) of the Act as an "other worker." Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, and, if applicable, evidence

¹ The AAO notes that the Form I-140 identified an individual [REDACTED] as the petitioner in Part 1. and that the petition was accompanied by a letter from [REDACTED] indicating his intent to offer the beneficiary employment as a construction worker "upon his legal status in the United States." However, [REDACTED] did not sign the Form I-140 as required by 8 C.F.R. § 103.2(a)(2).

that the alien meets any educational, training and experience, and other requirements of the labor certification. *See generally* 8 C.F.R. § 204.5(l)(3).

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, 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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The petitioner's brief statement does not identify an erroneous conclusion of law or statement of fact, nor does it even acknowledge the grounds for denial of the petition. As correctly observed by the director, the beneficiary in this matter is not eligible to self-petition and therefore, a Form I-140 signed by the beneficiary is not valid and cannot be approved.

Furthermore, the AAO notes that the submitted Form I-140 is only partially completed, and fails to include any information regarding the employer or proposed employment under Parts 5 and 6. The petition was not accompanied by a labor certification from the Department of Labor, did not identify the proffered wage, job title, or job location, and did not include evidence of the petitioner's ability to pay the proffered wage. *See* 8 C.F.R. § 204.5(g)(2). Even if the individual identified as the petitioner had properly executed the Form I-140, based on these deficiencies, the petition would not have been approvable, as it is not clear that it represents a bona fide offer of employment from a U.S. employer.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, this burden has not been sustained.

ORDER: The appeal is summarily dismissed.