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U.S. Citizenship
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Services

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OCT 24 2007



FILE:



EAC 04 007 54801

Office: VERMONT SERVICE CENTER

Date:

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: 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 Director, Vermont Service Center, denied the preference visa petition that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i).

The petitioner is an Asian grocery and meat store. It seeks to employ the beneficiary permanently in the United States as a meat cutter. As required by statute, the petition was accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director also found that the petitioner had failed to provide evidence sufficient to demonstrate that the job offer upon which the petition relies is *bona fide* when it was requested to do so in a notice of intent to deny.¹ The director denied the petition accordingly.

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.

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 attorney who originally represented the petitioner, [REDACTED] indicated that he was a member in good standing of the Pennsylvania and Washington, D.C. bar associations. [REDACTED] subsequently pleaded guilty to 164 counts of labor and immigration fraud and to additional charges. Further, reference to websites maintained by the Pennsylvania and Washington, D.C. bar associations² indicates that [REDACTED] was disbarred in both jurisdictions. The record contains no indication that [REDACTED] is now qualified to represent petitioners and applicants before the AAO.

[REDACTED] a Maryland attorney in good standing, filed the appeal in this matter. The Form G-28, Entry of Appearance as Attorney or Representative in the record recognizing [REDACTED] as counsel, however, indicates that the beneficiary, not the petitioner, retained him as counsel. Citizenship and Immigration Services' (CIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a

¹ The petitioner's original attorney of record in this matter pleaded guilty to multiple counts of labor and immigration fraud and to other charges. The service center determined that this fact justified additional scrutiny of labor certifications and visa petitions in which that attorney was involved.

² http://www.padisciplinaryboard.org/pa_attorney_search.php and <https://iapps.courts.state.ny.us/attorney/AttorneySearch>, accessed October 5, 2007.

beneficiary's behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). Although counsel states that he represents the petitioner as well as the beneficiary, no Form G-28 was submitted signed by the petitioner's authorized representative, and the record, therefore, contains no indication that the petitioner has consented to be represented by Mr. [REDACTED] or has acquiesced in filing the appeal. This appeal was not filed by the petitioner, or by any entity with legal standing in this proceeding, but by the beneficiary. As the appeal was not properly filed, it will be rejected pursuant to 8 C.F.R. § 103.3(a)(1)(iii) and 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i).

ORDER: The appeal is rejected as improperly filed.