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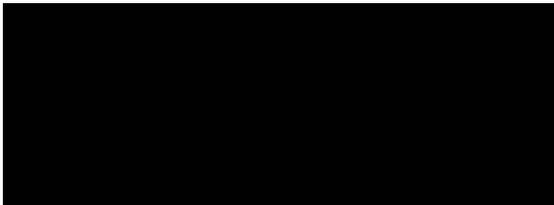
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
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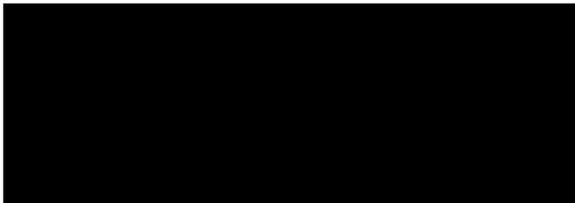


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **AUG 01 2008**
SRC-03-112-52689

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:



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 preference visa petition was denied by the Director, Texas Service Center. The subsequent appeal was rejected by the Administrative Appeals Office (AAO) and the director reaffirmed the denial of the petition. The matter is again before the AAO on a motion to reopen. The motion will be rejected as improperly and untimely filed.

The instant Form I-290B was filed by [REDACTED], on April 30, 2007 with a Form G-28, Entry of Appearance as Attorney or Representative, signed by [REDACTED] on behalf of the petitioner but without the attorney's signature. The individual that filed the instant Form I-290B checked the box for the statement that "I am an attorney or representative, and I represent:", but typed "Hector Mauricio Acosta Uribe" after the statement. The individual named Hector Mauricio Acosta Uribe is the beneficiary of the instant petition. The record does not contain any evidence showing that the petitioner retained this attorney in this matter.¹ 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 an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). 8 C.F.R. §§ 103.3(a)(2)(v)(A)(1) and (2) state in pertinent parts that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed, and if an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed.

The record of proceedings show that the instant petition was denied by the director on September 17, 2004. On October 19, 2004, the petitioner through its counsel filed a timely appeal. On March 13, 2006, the AAO rejected the appeal based on lack of jurisdiction and remanded the petition to the director. On April 11, 2006, the director issued a notice granting the petitioner thirty days to submit any additional evidence (RFE). The director determined that the petitioner had not overcome the reasons set forth in the denial since the petitioner did not submit a response. Accordingly, the director affirmed the denial of the petition on May 26, 2006. In this decision, the director expressly states that there is no appeal from this decision and that a motion to reopen or reconsider must be filed with the proper fee within thirty (30) days of the decision. The petitioner did not appeal this decision. Rather the beneficiary seeks to reopen the AAO's March 13, 2006 decision.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides in pertinent part that:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

The record indicates that the AAO issued the decision on March 13, 2006. The instant motion was dated April 26, 2007 and received by the director on April 30, 2007. Accordingly, the motion was untimely filed. The attorney who improperly filed the motion explained that the delay in filing this motion resulted from the unique and unusual factual circumstances of this case. However, the attorney does not explain how the

¹ Therefore, the petitioner is considered as represented by the original attorney.

unique and unusual factual circumstances caused the delay in filing the motion of over one year and how this delay could be considered reasonable and beyond the control of the petitioner. This office cannot find any reasons which were reasonable and beyond the control of the petitioner for the one year delay and thus the delay in filing the instant motion is not excusable under 8 C.F.R. § 103.5(a)(1)(i).

ORDER: The motion is rejected as improperly and untimely filed