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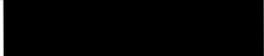
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B6



FILE:



Office: TEXAS SERVICE CENTER Date:

MAR 04 2006

WAC 06 100 52932

IN RE:

Petitioner:

Beneficiary:



Petition:

Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

IN BEHALF OF PETITIONER:

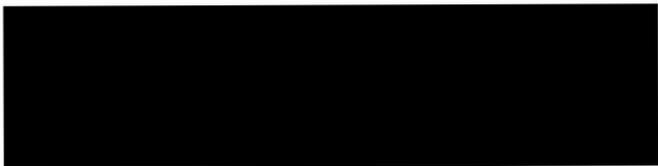


INSTRUCTIONS:

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

CC:



**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3) as a skilled worker. The petitioner is a metal products manufacturer. It seeks to employ the beneficiary permanently in the United States as a nightshift supervisor. As required by statute, the petition is accompanied by a labor certification from the Department of Labor. The director determined that the petitioner had not established its continuing financial ability to pay the proffered wage and denied the petition, accordingly.

The record shows that an attorney or representative has filed the appeal on behalf of the beneficiary without a proper entry of appearance executed on form G-28 showing that he represents the petitioner. The record also shows that a different attorney currently represents the petitioner.

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states in pertinent part:

*(2) Appeal by attorney or representative without proper Form G-28- (i) General.* 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. In such case, any filing fee the [Citizenship and Immigration Services (CIS)] has accepted will not be refunded regardless of the action taken.

(Original emphasis).

The regulation at 8 C.F. R. § 103.3(a)(1)(iii):

*(B) Meaning of “affected party.”* For purposes of this section and §§ 103.4 and 103.5 of this part “affected party” (in addition to [CIS]) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

The regulation at 8 C.F.R. § 103.3(a)(2) further states in relevant part:

*(v) 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.

(Original emphasis).

The attorney filing the appeal has not represented the petitioner in previous proceedings. As noted above, the record contains no entry of appearance (Form G-28), signed by the current petitioner, designating this attorney as its representative.

**ORDER:** The appeal is rejected.