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U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **NOV 25 2008**
SRC 05 231 50245

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: 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

CC: [REDACTED]

DISCUSSION: The preference 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.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who, at the time of petitioning for classification under this paragraph, are professionals.

The petitioner is a language school. It seeks to employ the beneficiary permanently in the United States as a foreign language teacher. The director determined that the petitioner had not established that the beneficiary met the education requirements of the labor certification as of the priority date of the visa petition. The director denied the petition accordingly.

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

- (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 the Service has accepted will not be refunded.
- (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 Service has accepted will not be refunded regardless of the action taken.
 - (ii) *When favorable action warranted.* If the reviewing official decides favorable action is warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of the request. If Form G-28 is not submitted within the time allowed, the official, may, on his or her own motion, under § 103.5(a)(5)(i) of this part, make a new decision favorable to the affected party without notifying the attorney or representative.
 - (iii) *When favorable action not warranted.* If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the AAO. The official shall also forward the appeal and the relating record of proceeding to the AAO. The appeal may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.

On November 16, 2005, counsel filed an appeal without a properly executed Form G-28, and on May 2, 2008, the petitioner, through counsel, requested that the appeal be withdrawn. On June 11, 2008 and on October 23, 2008, the AAO sent a fax to counsel requesting a properly executed Form G-28 that complies with 8 C.F.R. § 292.1 and 8 C.F.R. § 103.3(a)(1)(iii)(B), signed by the petitioner, the affected party with standing to appeal the director's decision. In response by phone, counsel stated that the petitioner was no longer in business, the beneficiary had left the country, and that it would not be likely that he could obtain a properly executed Form

G-28 from the petitioner. Therefore, without a properly executed Form G-28 entitling counsel to file the appeal and subsequent withdrawal, the appeal was improperly filed pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A), and such an appeal must be rejected.^{1 2}

ORDER: The appeal is rejected.

¹ Current counsel will be provided with a copy of the AAO's decision.

It is noted that a request for evidence (RFE) was sent to the petitioner's prior counsel, [REDACTED]. Although, the AAO has not received a response to the RFE from [REDACTED], the AAO will forward a copy of this decision to [REDACTED], since there is a properly executed Form G-28 in the record, signed both by the petitioner and [REDACTED].