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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

86

[REDACTED]

FILE: [REDACTED]
SRC 06 004 51861

Office: TEXAS SERVICE CENTER Date: **APR 17 2009**

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 BENEFICIARY:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The matter 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).

The petitioner is a convenience store. It seeks to employ the beneficiary permanently in the United States as a general manager. The director determined that the petitioner had not established (1) that it was a successor-in-interest to the employer listed on the Form ETA 750 submitted with the petition in the instant case, (2) that the beneficiary is qualified to perform the duties of the proffered position, or (3) that the petitioner had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

The Form I-290B indicates that the beneficiary retained counsel to file the appeal. United States Citizenship and Immigration Services' (USCIS) 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). No Form G-28, Entry of Appearance as Attorney or Representative, was submitted signed by both counsel and the petitioner's authorized representative.¹ The record is devoid of evidence establishing that the beneficiary is an authorized representative. As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

ORDER: The appeal is rejected as improperly filed.

¹ On July 31, 2007, the AAO sent a fax to counsel for the beneficiary requesting a Form G-28 signed by the petitioner. Counsel did not provide the requested Form G-28 in his response to the AAO.