

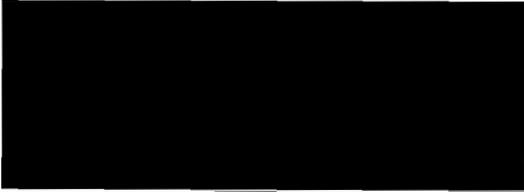
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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File: [REDACTED] Office: TEXAS SERVICE CENTER Date:
SRC 07 101 51750

JUL 16 2009

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

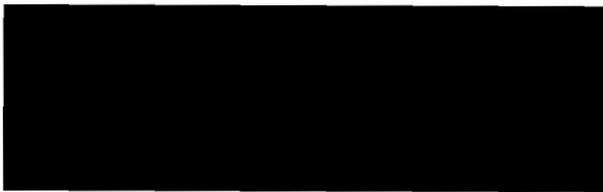
INSTRUCTIONS:

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.

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, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

cc:



DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. 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 wood floor and deck installer. It seeks to employ the beneficiary permanently in the United States as a deck installer supervisor (first-line supervisor/manager of construction trade workers). As required by statute, a labor certification approved by the Department of Labor accompanied the petition. The director determined that the petitioner had not demonstrated its continuing ability to pay the proffered wage beginning on the priority date of the visa petition and denied the petition accordingly.

The record of proceeding contains a properly executed Form G-28 (Form G-28), Notice of Entry of Appearance as Attorney or Representative, for the beneficiary's representative.¹ Additionally, the Form I-290B appellate form was filed by the beneficiary's representative. 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 evidence suggests that the petitioner consented to the filing of the appeal.

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).²

The record of proceeding contains a properly executed Form G-28 signed by the petitioner's representative and an attorney different than counsel filing the instant appeal. As noted herein, the petitioner's counsel is currently on the list of suspended and expelled practitioners. A courtesy copy of this decision will be provided to the beneficiary's counsel.

ORDER: The appeal is rejected as improperly filed.

¹ It is noted that an attorney who is currently on the list of suspended and expelled practitioners represents the petitioner, as maintained by the Executive Office of Immigration Review (EOIR). See 8 C.F.R. § 292.3; see also EOIR website (<http://www.usdoj.gov/eoir/profcond/chart.htm>)(as of June 20, 2009). Therefore, the AAO may not recognize counsel in this proceeding.

² The appeal may alternatively be summarily dismissed. On appeal, counsel to the beneficiary indicated that he would submit a brief and/or evidence to the AAO within 30 days and stated that the director's decision to deny the petition is arbitrary, capricious and an abuse of discretion. The regulation at 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii) states that an affected party may make a written request to the AAO for additional time to submit a brief and that, if the AAO grants the affected party additional time, it may submit the brief directly to the AAO. Counsel dated the appeal January 18, 2008. As of this date, more than 17 months later, the AAO has received nothing further. As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Counsel here has not specifically identified any erroneous conclusion of law or statement of fact and has not provided any additional evidence. The appeal may therefore be summarily dismissed.