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

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: SRC 07 221 52902 Office: TEXAS SERVICE CENTER Date: JUL 30 2009

IN RE: Petitioner: [redacted]
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)

ON BEHALF OF PETITIONER:

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

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petitioner's employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is an electrical installation and wiring business. It seeks to employ the beneficiary permanently in the United States as an electrician. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL).[1] The director determined that the petitioner had not established that it had signed the Form I-140 petition as required by regulation. The director denied the petition accordingly.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (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.

Review of the record shows that the petition has not been properly filed, and therefore there is no legitimate basis to continue with this proceeding.

The Form I-140 petition identifies RCD, Inc. as the employer and the petitioner. The regulation at 8 C.F.R. § 103.2(a)(2) requires that the petitioner sign the petition. In this instance, no employee or officer of RCD, Inc. signed Form I-140.[2] The only signatures on that form are that of [redacted], who purports to be a "representative agent" of the employer, and [redacted], who represents

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[1] The instant petition is for a substituted beneficiary. An I-140 petition for a substituted beneficiary filed prior to July 16, 2007 retains the same priority date as the original ETA 750. Memo. From Donald Neufeld, Acting Associate Director, Domestic Operations, United States Citizenship and Immigration Services (USCIS), to Regional Directors, *et al.*, *Interim Guidance Regarding the Impact of the [DOL's] final rule,* Labor Certification for Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity, *on Determining Labor Certification Validity and the Prohibition of Labor Certification Substitution Requests,* http://www.uscis.gov/files/pressrelease/DOLPermRule060107.pdf (accessed July 16, 2009).

[2] On appeal, counsel submits a new Form I-140 endorsed on February 5, 2008, by [redacted] in his capacity as President of the petitioner. However, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988). A petitioner must establish the elements for the approval of the petition at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); *see also* 8 C.F.R. § 103.2(b)(12).

the petitioner as counsel.[3] [redacted] signed Part 8 of the Form I-140, "Petitioner's Signature," thereby attempting to file the petition on behalf of the actual United States employer.[4] However, the regulations do not permit [redacted], who is not the petitioner, to sign Form I-140 on behalf of a United States employer.

The regulation at 8 C.F.R. § 204.5(c) states:

> *Filing petition.* Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The regulation at 8 C.F.R. § 103.2(a)(2) states:

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[3] This office notes that counsel did not submit a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the petitioner until eight months after the Form I-140 petition was filed.

[4] On appeal, counsel submitted a copy of a document titled "Appointment of Representative as Agent." The document was signed by [redacted], in her capacity as Human Resources Director of the petitioner, on September 4, 2002, and by [redacted], in his capacity as President of Empower, Inc., on May 1, 2003. The document states that the petitioner appointed Empower, Inc. as agent to act on its behalf and to perform services involving alien Employment Certification before the DOL, preference petitions before USCIS, and visa processing by a Consular Officer of the United States Department of State at an American Embassy abroad. The document also delegated to Empower, Inc. the revocable power to execute all documents in the name of the petitioner. This office notes that the agent designated on the "Appointment of Representative as Agent" document submitted by counsel is Empower, Inc. According to the Virginia State Corporation Commission's website, Empower, Inc. is a fictitious name used by Empower Import & Export, Inc. *See http://s0302.vita.virginia.gov/servlet/resqportal/resqportal (accessed February 7, 2008).* Empower Import & Export, Inc. is no longer in good standing in the state of Virginia. The term of the corporation ended in November 2003. *See id.* **Therefore, Empower, Inc. was not an active** corporation at the time the Form I-140 petition was filed on July 11, 2007. Further, counsel indicates in his brief on appeal that the petitioner retained Empower-Visa, Inc., doing business as Empower, Inc., as its representative agent. According to the Virginia State Corporation Commission's website, Empower-Visa, Inc. was incorporated in January 2003. *See id.* The record of proceeding does not contain an "Appointment of Representative as Agent" document for Empower-Visa, Inc., nor is there any evidence of the relationship between Empower, Inc. and Empower-Visa, Inc. in the record of proceeding. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

> *Signature*. An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the [USCIS] is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

There is no regulatory provision that waives the signature requirement for a petitioning United States employer or that permits a petitioning United States employer to designate a "representative agent," attorney or accredited representative to sign the petition on behalf of the United States employer. The petition has not been properly filed because the petitioning United States employer, RCD, Inc., did not sign the petition. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition.

Counsel notes in his brief on appeal that USCIS approved other petitions that had been previously filed by Empower, Inc. on behalf of other employers. The director's decision does not indicate whether he reviewed the prior approvals of the other immigrant petitions. If the previous immigrant petitions were approved without the proper signatures of the petitioning United States employers, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved immigrant petitions filed by Empower, Inc. on behalf of other employers, the AAO would not be bound to follow the contradictory decisions of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petition has not been properly filed by a United States employer. Therefore, we must reject the appeal.[5]

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[5] It is noted that the petitioner requests oral argument before the AAO. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8

ORDER: The appeal is rejected.

C.F.R. § 103.3(b). In this instance, not only is the appeal being rejected, the petitioner identified no unique factors or issues of law to be resolved at oral argument that cannot be adequately addressed in writing. Consequently, the request for oral argument is denied.