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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:

SRC 07 088 54200

Office: TEXAS SERVICE CENTER

Date: JUN 23 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)

ON 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.

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 Director, Texas Service Center, denied the third preference visa petition and 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 church-school. It seeks to employ the beneficiary permanently in the United States as a maintenance and repair worker. 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 petitioner's attorney, [REDACTED]. However, the Form I-290B appellate form was filed and signed by [REDACTED] of American Legal Immigration Services.<sup>1</sup> No Form G-28 was submitted signed by both [REDACTED] and the petitioner's authorized representative. United States Citizenship and Immigration Services' (USCIS) regulations specifically require an affected party, or its attorney or representative, to file the appeal. 8 C.F.R. § 103.3(a)(2)(i). No evidence suggests that the petitioner consented to the filing of the appeal or that Carrie O'Connell is an authorized representative or attorney. Accordingly, 8 C.F.R. §§ 103.3(a)(2)(v)(A)(2)(ii) and (iii) do not apply. An appeal filed by an attorney or representative without a properly executed Form G-28 entitling that person to file the appeal must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i).

As the appeal was not properly filed, it will be rejected.<sup>2</sup>

**ORDER:** The appeal is rejected as improperly filed.

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<sup>1</sup> The address and phone number of [REDACTED] differs from the address and phone number of [REDACTED].

<sup>2</sup> Even if the appeal were not being rejected, the appeal would be dismissed. Upon review, the petitioner has failed to establish that it had the continuing ability to pay the proffered wage. The petitioner failed to submit tax returns, audited financial statements, or annual reports, even though such evidence was requested by the director. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The burden of proof in this matter rests with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. It is also noted that the petitioner's payment of wages to other employees in the past will not establish that the petitioner has the ability to pay the proffered wage.