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

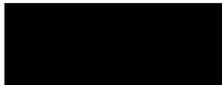


U.S. Citizenship  
and Immigration  
Services

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FILE:   
SRC-08-081-53252

Office: TEXAS SERVICE CENTER

Date: MAR 17 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:

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

**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 U.S. citizen. She seeks to employ the beneficiary permanently in the United States as a housekeeper. The director denied the petition.

The instant appeal was filed by [REDACTED], Croton on Hudson, New York 10520 as the employer. Mr. [REDACTED] indicates that he has lived at the address for 20 years and has successfully sponsored four aliens. However, the record of proceeding does not contain any documentary evidence showing that [REDACTED] is the petitioner or an authorized representative of the petitioner. U.S. 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.

Therefore, as the appeal was not properly filed, it will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1). The AAO finds that the instant appeal would be rejected as untimely filed even if it would not be rejected as improperly filed.

The record indicates that the director issued the decision on October 31, 2008. A Form I-290B, Notice of Appeal or Motion was received by the director on December 1, 2008, 31 days after the decision was issued. However, on December 2, 2008, the director returned the Form I-290B to the petitioner and indicated that it included the incorrect filing fee. The director received the resubmitted Form I-290B with the proper \$585.00 filing fee on December 16, 2008.

The regulation at 8 C.F.R. § 103.3(a)(2) requires an affected party to file the complete appeal within 30 days after service of the decision, or, in accordance with 8 C.F.R. § 103.5a(b), within 33 days if the decision was served by mail. Title 8 C.F.R. § 103.2(a)(7)(i) requires USCIS to reject any petition or application filed with the incorrect filing fee. Likewise, filings which were rejected because they were submitted with incorrect filing fees do not retain filing dates. Therefore, in this matter, the director is required to reject the appeal as untimely filed. Although the initial Form I-290B was filed within 33 days of the decision, this submission included the incorrect filing fee. Therefore, as this filing did not retain a filing date, the actual filing date for the Form I-290B is December 16, 2008, 46 days after the decision was issued. Thus, the appeal was not timely filed and must be rejected on these grounds pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected.

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