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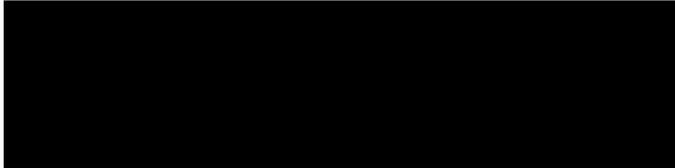
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date NOV 02 2009

RECEIPT #SRC 07 157 51192

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

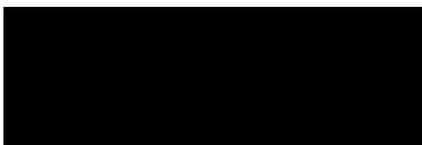
INSTRUCTIONS:

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.

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).

Perry Rhew  
Chief, Administrative Appeals Office

CC:



**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 restaurant. It seeks to employ the beneficiary permanently in the United States as a manager, food service. As required by statute, a labor certification approved by the Department of Labor accompanied the petition.<sup>1</sup> 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 Form I-290B appellate form was not accompanied by a properly executed Form G-28 by the petitioner consenting to the representation of counsel on the appeal. U.S. Citizenship and Immigration Services' (USCIS) regulations specifically state if an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the USCIS has accepted will not be refunded regardless of the action taken. *See* 8 C.F.R. § 103.3(a)(2)(v)(2)(i). No evidence suggests that the petitioner consented to the filing of the appeal.<sup>2</sup>

As the appeal was not properly filed, and it is unclear whether or not the petitioner consented to having an appeal filed on its behalf, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

<sup>1</sup> The petitioner is [REDACTED]. The petitioner's "IRS Tax#" listed in Part 1 of the Form I-140 is [REDACTED]. Business records, e.g., tax returns and an Assumed Name Certificate, submitted by the petitioner indicate that [REDACTED] is a fictitious name used by [REDACTED]. Accordingly, the petitioner in this matter is [REDACTED] a New York corporation having employer identification number [REDACTED]. Crucially, this petitioner is not the same as the employer identified in the Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor. The employer listed in the Form ETA 750 is [REDACTED] Inc. Business records submitted by the petitioner, e.g., tax returns, indicate that this entity's employer identification number is [REDACTED] and that it is a separate and distinct corporation with a different place of business. As the record is devoid of evidence that the petitioner is a successor-in-interest to the employer identified in the certified Form ETA 750, or that the job opportunity described in the Form I-140 is the same opportunity described in the Form ETA 750, the petition could not be approved as it has not been established that it is accompanied by an approved labor certification. *See* Section 203(b)(3)(C) of the Act, 8 U.S.C. sec. 1153(b)(3)(C); 8 C.F.R. sec. 204.5(l)(3)(i); 20 C.F.R. 656.30(c)(2) ("[a] labor certification involving a specific job offer is valid only for the particular job opportunity and for the area of intended employment stated on the [Form ETA 750]"). Therefore, if the appeal were not being rejected, it would be dismissed for this reason.

<sup>2</sup> The record of proceeding contains two executed Forms G-28 (Form G-28) both dated December 9, 2005, Notice of Entry of Appearance as Attorney or Representative for the beneficiary with the beneficiary consenting to the representation by his signatures on the forms. On the same G-28 forms, there is Notice of Entry of Appearance as Attorney or Representative for another corporation, [REDACTED] but without a consent to representation.

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