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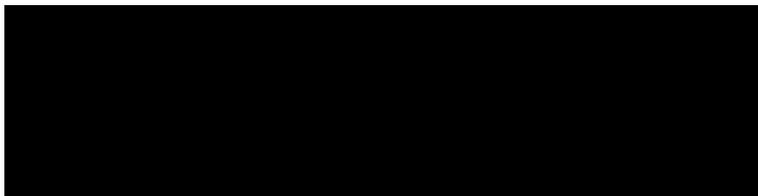
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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Office: NEBRASKA SERVICE CENTER

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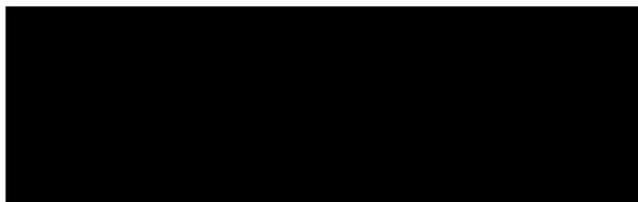
Petitioner:

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

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center. The petitioner then submitted a motion to reopen and reconsider the matter and the director granted the motion to reopen. The director reopened the proceedings. After consideration of the evidence submitted by the petitioner on motion, on May 20, 2009, the director affirmed the initial decision to deny the instant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal.

The petitioner is a tour operator services company. It seeks to employ the beneficiary permanently in the United States as a computer systems analyst. As required by statute, the petition is accompanied by ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the 2006 priority date of the visa petition. The director denied the petition accordingly.

The record shows that the appeal is properly filed, and timely; however, current counsel makes no specific allegation of error in law or fact pertinent to the present proceedings. Counsel rather asserts that the petitioner utilized a person named [REDACTED], in West Palm Beach, who was not licensed to practice law, to file the instant I-140 petition and motion to reopen. Counsel states that it is a felony in the state of Florida to give legal advice when you are not a licensed attorney and also asserts that [REDACTED] did not request the proper documentation from the petitioner and prepared an argument on the ability to pay issue that directly attributed to the denial of the instant petition.

Current counsel also states that [REDACTED] also may have violated the rule that requires a person assisting the preparation of forms to sign the forms as a preparer. In a letter submitted with the I290B, the beneficiary states that [REDACTED], with offices located in West Palm Beach, Florida helped the petitioner's president and the beneficiary in the filing of the I-140 petition and the I-485 Adjustment application, giving them legal advice. The beneficiary states that [REDACTED] also erroneously filed a Motion to Reopen rather than an appeal in response to the director's denial of the instant petition.

The AAO notes that the record does not contain a G-28, Notice of Entry of Appearance as Attorney or Representative, for the individual identified by current counsel. Neither the petitioner nor current counsel provides any evidence to the record that this individual is either licensed or not licensed in the state of Florida as an attorney. In addition, the I-140 petition and the motion to reopen were signed by [REDACTED] the petitioner's president. The cover letter that accompanied the I-140 petition and the statement submitted on motion were also signed by [REDACTED]. The director in both his initial decision and in the decision on the petitioner's motion to reopen or reconsider, considered the petition as self-represented. In sum, the record contains no information or evidence with regard to any former counsel.

Further, any appeal or motion based upon a claim of ineffective assistance of counsel requires:

- (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with

- respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard,
- (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and
  - (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not why not.

*Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1<sup>st</sup> Cir. 1988).

In the instant matter, current counsel has only provided a letter from the beneficiary that outlines in **general terms the petitioner's dealings with** [REDACTED]. The beneficiary's letter is not an affidavit as it was not sworn to by the beneficiary before an officer who has confirmed the beneficiary's identity and administered an oath. *See Black's Law Dictionary* 58 (West 1999). Thus the record contains no evidence that [REDACTED] was ever the petitioner's counsel or that he provided ineffective counsel to the petitioner. The second and third prong of the ineffective counsel issue are not addressed at all by the petitioner or current counsel.

Further, current counsel states on the I290B form that her brief and additional evidence in support of the appeal will be submitted to the AAO within 30 days. Counsel dated the appeal June 17, 2009. As of this date, more than five months later, the AAO has received nothing further. The regulation requires that any brief shall be submitted directly to the AAO. 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii).

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.

On appeal counsel specifically states that the person who may have provided legal advice to the petitioner did not make an adequate argument to establish the petitioner's ability to pay the proffered wage. She did not provide any additional evidence as to the merits of the instant petition. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, counsel has not expressed any specific disagreement with the director's decision. The appeal must therefore be summarily dismissed.

**ORDER:** The appeal is dismissed.