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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 08 026 53424

Office: TEXAS SERVICE CENTER

Date MAR 05 2010

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 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).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The petitioner appealed the director's decision and, on September 1, 2009, the Administrative Appeals Office (AAO) dismissed the appeal. Subsequently, on October 2, 2009, a motion to reopen the AAO decision was filed. The motion will be dismissed pursuant to 8 C.F.R. § 103.5(a)(iii)(A) and § 103.5(a)(4).

The petitioner is a dry cleaner.¹ It seeks to employ the beneficiary permanently in the United States as a spotter. As required by statute, the petition is accompanied by Form ETA 750, Application for Alien 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 priority date of the visa petition. The director denied the petition accordingly.

The petitioner appealed the director's decision. On September 1, 2009, the AAO summarily dismissed the appeal. A Motion to Reopen the AAO's decision was filed on October 2, 2009 on Form I-290B, Notice of Appeal of Motion. The Form I-290B was signed by [REDACTED] Ms. [REDACTED] indicates on the Form I-290B that she represents the beneficiary. A Form G-28, Entry of Appearance as Attorney or Representative, was submitted in conjunction with the Form I-290B. The Form G-28 is signed by the beneficiary and by [REDACTED] 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 or associated motion. 8 C.F.R. § 103.3(a)(1)(iii)(B) and 8 C.F.R. § 103.5(a)(iii)(A).

As the motion does not meet applicable requirements, it will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The appeal is dismissed.

¹ It is noted that, according to Florida state corporate records, the petitioner's corporate status in Florida has been dissolved. A corporation which has been dissolved may not carry on any business except for taking action to wind up its affairs. *See* Fl. Stat. Ch. §607.14051. Therefore, the petitioner no longer exists and can no longer be considered a legal entity in the United States. This would call into question the petitioner's continued eligibility for the benefit sought if the instant motion were not being dismissed for the reasons set forth herein.

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MAR 08 2010

Dear [REDACTED]

The United States Citizenship and Immigration Services (USCIS) Administrative Appeals Office (AAO) is in receipt of a motion and a Form G-28 that were filed in relation to a Form I-140 that is now before the AAO on motion (SRC 08 026 53424). The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) permits an affected party to “be represented by an attorney or representative” but specifically states that this “does not include the beneficiary of a visa petition.” However, the Form G-28 that you provided was not signed by the petitioner or any entity with legal standing in this proceeding. There is no regulatory provision that would allow USCIS to recognize the appearance of an attorney who does not represent the affected party or to consider a brief or motion that was provided by someone who does not represent the affected party. Absent evidence in the form of a Form G-28 establishing that you represent the affected party in this proceeding, the AAO will not recognize the brief that you provided on motion.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office