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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
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MAR 12 2010

FILE:



Office: TEXAS SERVICE CENTER

Date:

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IN RE:

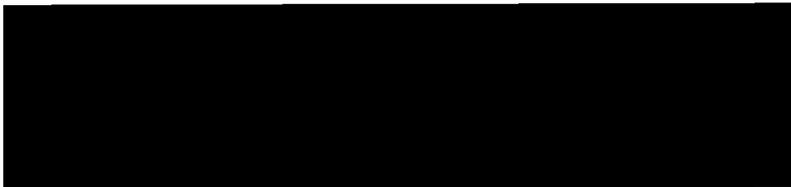
Petitioner:

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).

Perry Rhew
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 claims to be a restaurant. It seeks to permanently employ the beneficiary in the United States as an Indian chef. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).

The director denied the petition on June 10, 2003.¹ An appeal of the decision was filed on July 8, 2003. The appeal consisted of a Form I-290B, Notice of Appeal, and Form G-28, Notice of Entry of Appearance as Attorney or Representative. The Form G-28 was signed by the beneficiary and the beneficiary's representative. The Form I-290B was filed and signed by the beneficiary's representative. U.S. Citizenship and Immigration Services' (USCIS) regulations specifically prohibit a beneficiary of a 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.

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

Even if the appeal were properly filed, it would have been summarily dismissed. The Form I-290B states that the decision "was arbitrary, capricious and not justified. Appellant will file a formal brief with the [AAO] within the time constraints allowed by law." To date, no brief or supporting evidence has been submitted. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO "shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." Inasmuch as the appeal failed to identify specifically an erroneous conclusion of law or statement of fact, the appeal would have been summarily dismissed if it were not rejected.²

ORDER: The appeal is rejected as improperly filed.

¹The decision incorrectly states that it was issued on June 10, 2002.

²It is also noted that the petitioner has been dissolved by the State of Mississippi. See <https://business.sos.state.ms.us/corp/soskb/Corp.asp?166737>. Where there is no active business, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. Even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer's business in an employment-based preference case.