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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: [Redacted]  
SRC 07 166 51982

Office: TEXAS SERVICE CENTER

Date: MAR 26 2010

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and 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 specialty cook. 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 further determined that the petitioner had not demonstrated that the beneficiary had the qualifications stated on the Form ETA 750, as certified by the DOL and submitted with the instant petition. The director denied the petition accordingly.

A form I-290B, Notice of Appeal or Motion, was filed on August 2, 2007. The Form I-290B was signed by [REDACTED]. The Form G-28, Notice of Entry of Appearance as Attorney or Representative, submitted in conjunction with the Form I-290B, was signed by [REDACTED] and the beneficiary of the Form I-140 petition. The record does not contain a Form G-28 signed by 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). Although counsel indicates on the Form I-290B that he represents the petitioner, no Form G-28 was submitted signed by both counsel and the petitioner's authorized representative. As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

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

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