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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



B4

FILE:



Office: NEBRASKA SERVICE CENTER

SEP 21 2010
Date:

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant petition for Alien Worker as an Other Worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A).

ON BEHALF OF PETITIONER:

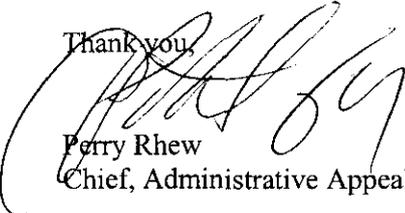
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 produce company. It seeks to employ the beneficiary permanently in the United States as a stock clerk. As required by statute, a labor certification approved by the Department of Labor accompanied the petition. 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 record of proceeding contains a properly executed Form G-28 (Form G-28), Notice of Entry of Appearance as Attorney or Representative for the beneficiary's representative. Additionally, the Form I-290B appellate form was filed and signed by the beneficiary's representative. United States 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). The record does not contain a properly executed G-28 submitted with the appeal consenting to the petitioner's representation by counsel for the beneficiary and no evidence suggests that the petitioner consented to the filing of the appeal.

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).

ORDER: The appeal is rejected as improperly filed.