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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



B6

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: APR 08 2011  
EAC 03 014 51159

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as Any Other Worker, Unskilled (requiring less than two years of training or experience), pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

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 \$630. 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

cc: SARA K. WARD  
MAIONA & MAIONA, P.C.  
171 MILK STREET, SUITE 200  
BOSTON, MA 02109

**DISCUSSION:** The petitioner filed an immigrant petition for alien worker, Form I-140, on October 15, 2001. The employment-based immigrant visa petition was initially approved by the Director of the Vermont Service Center (VSC) on May 12, 2003. The Director of the Texas Service Center (TSC), however, revoked the approval of the immigrant petition on August 5, 2009. On August 21, 2009, the beneficiary of the visa petition filed a Notice of Appeal or Motion, Form I-290B, with the Administrative Appeals Office (AAO), appealing the director's decision to revoke the approval of the visa petition. On October 18, 2010, the TSC director rejected the appeal. The decision of the director rejecting the appeal is now before the AAO. Upon review, the AAO finds that the director's decision to reject the appeal is procedurally erroneous and will be withdrawn. The AAO, not the director, pursuant to 8 C.F.R. § 103.3(a)(2)(iv) shall have the jurisdiction over a properly filed appeal in this case.<sup>1</sup> Nevertheless, the appeal will be rejected since the beneficiary through his counsel is not entitled to file the appeal in this proceeding, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1). The director's decision to revoke the approval of the petition will not be disturbed.

The petitioner is a manufacturing company. It seeks to employ the beneficiary permanently in the United States as a machine set-up operator, pursuant to Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii).<sup>2</sup> As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The VSC director initially approved the petition on May 12, 2003.

United States Citizenship and Immigration Services (USCIS), however, found numerous problems including fraud and willful misrepresentation in other I-140 petitions and labor certification applications that the beneficiary's former attorney of record, [REDACTED] filed. Because of these other petitions and since [REDACTED] filed the petition in this case, USCIS – TSC sent a notice of intent to revoke (NOIR) to the petitioner on February 10, 2009. The TSC director requested that the petitioner submit additional evidence to demonstrate that the beneficiary had at least two years working experience in the job offered prior to the filing of the labor certification application in July 2001 and that the petitioner complied with all of the DOL's recruiting procedures. In response to the director's NOIR, the following additional evidence was submitted by [REDACTED]

- A letter from the beneficiary affirming his prior work experience in Brazil as a machine operator from 1995 to 1998;

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<sup>1</sup> The regulation at 8 C.F.R. § 103.3(2)(iv) specifically states, "If the reviewing official will not be taking favorable action or decides favorable is not warranted, that official shall promptly forward the appeal and the relating record of proceeding to the AAO in Washington, DC."

<sup>2</sup> Section 203(b)(3)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

- The [REDACTED] of the beneficiary's former employer in Brazil;<sup>3</sup>
- Copies of newspaper advertisements that the petitioner posted in the *Boston Herald* in 2001 to recruit workers; and
- A letter from Interstone and Tile stating that the beneficiary no longer works for the petitioner and that he has worked at Interstone and Tile as a stone cutter since July 31, 2008.

Upon review, the director determined that the petitioner had failed to provide sufficient evidence to demonstrate that the beneficiary qualified for the position and that it complied with the DOL's recruitment procedures.

On appeal, the beneficiary through his new counsel of record simply stated that USCIS erred as a matter of fact and law in revoking the previously approved I-140 petition. The beneficiary also submitted an affidavit from his employer in Brazil.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>4</sup>

The AAO notes that the party who filed the appeal in this case is the beneficiary. As a threshold issue before this office can adjudicate the subject matter of the appeal, we must determine whether the beneficiary has legal standing to appeal in this proceeding.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B), in pertinent part, states,

For purposes of this section and §§ 103.4 and 103.5 of this part, affected party (in addition to the Service) means the person or entity with legal standing in a proceeding. **It does not include the beneficiary of a visa petition.** (emphasis added).

Further, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1) states, "An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed."

The explicit language of the regulations noted above suggests that the beneficiary and/or his counsel would not have legal standing and would not be authorized to file the appeal in this

[REDACTED] is a database which shows all businesses in Brazil, with each company having a unique [REDACTED] number.

<sup>4</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

matter. Here, the appeal was authorized by the beneficiary and filed by the beneficiary's counsel, and no evidence of record suggests that the petitioner consented to the filing of the appeal. The beneficiary and his counsel are not entitled to appeal in this proceeding. Therefore, the appeal in this case is improperly filed and must be rejected.<sup>5</sup>

Since the appeal is improperly filed and rejected, we will not address the issue of whether the beneficiary had the requisite work experience before the priority date, whether the petitioner had the continuing ability to pay the proffered wage from the priority date, and whether the director's decision to revoke the approval of the petition was consistent with the evidence of record.

**ORDER:** The appeal is rejected as improperly filed. The director's decision to revoke the approval of the petition remains undisturbed.

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<sup>5</sup> Although the appeal is improperly filed, the beneficiary's counsel will be provided a courtesy copy to notify the beneficiary of the AAO's decision.