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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



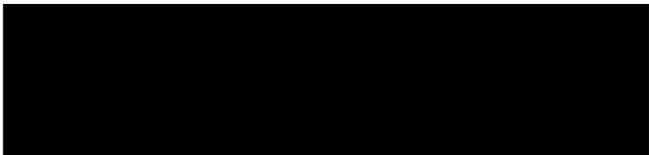
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DATE: **APR 20 2011** Office: TEXAS SERVICE CENTER FILE:   
SRC 07 218 50244

IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to Section  
203(b)(3) of the Immigrant 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 your 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

**DISCUSSION:** The Director, Texas Service Center, denied the third preference visa petition. The Administrative Appeals Office (AAO) rejected a subsequent appeal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the appeal will be rejected.

As noted in the AAO's previous decision of March 24, 2009, the employer, [REDACTED] and [REDACTED] seeks to employ the beneficiary permanently in the United States as a cook. As required by statute, a labor certification approved by the Department of Labor accompanied the petition. The director determined that the petitioner designated on the Form I-140, "Hermandad Mexicana Nacional," had failed to submit sufficient evidence supporting its position as a successor-in-interest to the applicant on the labor certification, [REDACTED] and denied the petition accordingly.

The Form I-290B appellate form was filed and signed by the beneficiary and listed [REDACTED] as the name of the petitioning business. 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).

As the appeal was not properly filed, it was rejected on March 24, 2009. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The petitioner, through counsel who took over representation following the appeal's rejection, has filed a motion designated as a motion to reopen on the Form I-290B. On page 2 of the notice of appeal, the date of the denial is stated as "March 23, 2009," and the USCIS office where the decision issued is stated as "AAO/TSC." The contents of counsel's April 21, 2009, letter to the director refers to the submission as a motion to reopen and reconsider. It also refers to it as an appeal of the AAO's March 24, 2009 decision.

The regulation at 8 C.F.R. § 103.5(a)(3) provides that a motion to reconsider must offer the reasons for reconsideration and be supported by pertinent legal authority showing that the decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy. It must also demonstrate that the decision was incorrect based on the evidence contained in the record at the time of the initial decision. A motion to reopen must state the new facts to be submitted in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

The AAO accepts counsel's submission as a motion for reconsideration and to reopen the AAO's decision to reject the appeal, as that is the decision from which the petitioner's notice of appeal or motion was filed. Counsel has submitted a copy of an informational form that was completed by the petitioner with the letterhead of [REDACTED] which is the entity that presented itself first as the petitioner and subsequently as the petitioner's representative on the Form I-140 that was filed on June 13, 2007.<sup>1</sup> Counsel has also submitted on motion a draft of a signed

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<sup>1</sup> The organization, [REDACTED] submitted the I-140 petition and

letter, dated October 12, 2007, addressed to the director and submitted in the response to the director's intent to deny. It explains the error made on the Form I-140 that was submitted identifying the petitioner as [REDACTED]. Counsel has additionally submitted copies of receipts issued to the beneficiary from [REDACTED] in connection with their representation,<sup>2</sup> as well as other documents confirming, as noted in the AAO's previous decision, that this entity is not an accredited representative.

The regulation governing representation in filing immigration petitions and/or applications with United States Citizenship and Immigration Services (USCIS) is found at 8 C.F.R. § 103.2(a)(3), which provides in pertinent part that:

(3) *Representation.* An applicant or petitioner may be represented by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter.

The regulation at 8 C.F.R. § 292.1(a)(4) defines an accredited representative as a person representing an organization described in 8 C.F.R. § 292.2 who has been accredited by the Board of Immigration Appeals (BIA). The regulation at 8 C.F.R. § 292.2 describes the processes by which the BIA: (1) recognizes an organization as authorized to provide accredited representatives, and (2) accredits a person as a representative of a recognized organization.

As stated in the AAO's previous decision, the appeal was not filed by the petitioner, an authorized representative or any entity with legal standing in the proceeding, but rather by the beneficiary. Therefore, the appeal was properly rejected. 8 C.F.R. § 103.2(a)(2)(v)(A)(i). Although counsel's

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represented itself as the petitioner rather than [REDACTED] which had been specified on the labor certification as the employer. It also made other mistakes relating to addresses given. It subsequently explained these errors and additionally designated itself as the petitioner's "legal representative" in a letter to the director. [REDACTED] was designated as the petitioner on an amended I-140 that was submitted in response to the director's Notice of Intent to Deny. The regulation at 8 C.F.R. § 292.1(a)(4) provides that an accredited representative is a person "representing an organization described in § 292.2 of this chapter who has been accredited by the Board." There is no indication that [REDACTED] is an organization accredited by the Board of Immigration Appeals. See <http://www.USDOJ.gov/eoir/statspub/raroster.htm>. Until such evidence is provided, the director is instructed not to recognize this entity as a representative of any party.

<sup>2</sup> It is noted that the regulation at 20 C.F.R. § 656.12(b) provides that an "alien may pay his or her own costs in connection with a labor certification, including attorneys' fees for representation of the alien, except that where the same attorney represents both the alien and the employer, such costs shall be borne by the employer."

motion to reopen and reconsider was filed in response to this decision, it did not specifically overcome the basis for the AAO's rejection of the appeal.

**ORDER:** The motion to reopen and reconsider is approved. The AAO decision dated March 24, 2009 is affirmed. The appeal remains rejected.