

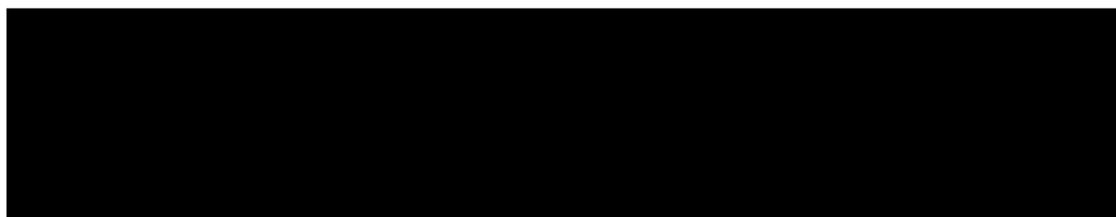
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

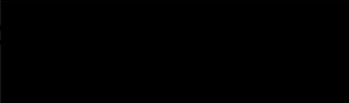


**U.S. Citizenship
and Immigration
Services**



B6

DATE: **SEP 02 2011** Office: NEBRASKA SERVICE CENTER

FILE: 

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:

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 \$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 preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a healthcare staffing company. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, the petition is accompanied by ETA Form 9089, Application for Permanent Employment Certification (ETA Form 9089), approved by the United States Department of Labor (DOL), accompanied the petition. The director determined that the petitioner has not established that the beneficiary had a U.S. bachelor's degree or a foreign equivalent degree as of the priority date. Accordingly, the petition was denied.

The Form I-290B, Notice of Appeal or Motion, was filed by [REDACTED] signed the Form I-290B on August 21, 2009 and filed it with the Nebraska Service Center on August 24, 2009. Mr. [REDACTED] failed to check the box "I am an attorney or representative." While the appeal was filed timely, the record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the petitioner and [REDACTED]. The record contains a copy of a Form G-28 signed by the petitioner and attorney [REDACTED] who represented the petitioner in filing the instant petition. However, the record does not contain any evidence showing that [REDACTED] and [REDACTED] are from a same law firm and that the petitioner's authorization to Ms. [REDACTED] extends to [REDACTED].

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. § 1.1(f) states:

The term attorney means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law.

The regulation at 8 C.F.R. § 292.1(a)(6) encompasses the following type of foreign attorneys:

Attorneys outside the United States. An attorney other than one described in Sec. 1.1(f) of this chapter who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which he/she resides and who is

engaged in such practice. Provided that he/she represents persons only in matters outside the geographical confines of the United States as defined in section 101(a)(38) of the Act, and that the Service official before whom he/she wishes to appear allows such representation as a matter of discretion.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) defines the meaning of the effective party who can file an appeal as the person or entity with legal standing in a proceeding or their attorney or representative. The record does not contain evidence that the instant appeal was filed by a person entitled to file the appeal. 8 C.F.R. § 103.3(a)(2)(v)(A)(1) and (2) states in pertinent part that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed, and if an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. Accordingly, as the appeal was not properly filed, it will be rejected.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The AAO notes that even if the instant appeal were not rejected as improperly filed, it must still be dismissed because the petitioner has been debarred pursuant to §§ 212(n)(2)(C)(i) and (ii) of the Immigration and Nationality Act (the Act). As a result, United States Citizenship and Immigration Services (USCIS) may not approve a nonimmigrant or immigrant petition with respect to the petitioner during the one-year debarment period from July 1, 2011 through June 30, 2012.

The petition may not be approved pursuant to a July 22, 2011, Memorandum from Donald Neufeld, Associate Director of Service Center Operations, HQSCOP (Neufeld Memo), listing the petitioner as a debarred entity. Pursuant to the Neufeld Memo, no immigrant visa petitions and no H, L, O, or P-1 nonimmigrant visa petitions filed with respect to the petitioner shall be approved by USCIS for a period of one year, commencing on July 1, 2011, and ending on June 30, 2011.

The petitioner in this case was the subject of an investigation by the DOL in accordance with 20 C.F.R. § 655.855 and was found to have engaged in certain actions rendering it subject to mandatory debarment under section 212(n)(2)(C)(i) and (ii) of the Act. The Act mandates that USCIS shall not approve petitions filed with respect to the petitioner under sections 204 or 214(c) of the Act (8 U.S.C. §§ 1154 or 1184(c)) for a period of one year.¹ Therefore, the

¹ Sections 212(n)(2)(C)(i) and (ii) of the Act, 8 U.S.C. §§1182(n)(2)(C)(i) and(ii). We note that certain statutes that preclude USCIS from approving applications effectively require that USCIS deny the application. For instance, the language of Sections 204(c), (d), and (g) of the Act all similarly provide that “notwithstanding [the relevant applicable subsections] . . . no petition shall

petitioner cannot be approved and the instant appeal must be dismissed if it were not be rejected as improperly filed.

ORDER: The appeal is rejected as improperly filed.

be approved if [the following facts are present].” Further, on October 21, 1998, President Clinton signed into law the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, which incorporated several immigration-related provisions, including the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). ACWIA mandated new requirements for petitioners filing for H-1B beneficiaries. Pursuant to ACWIA, penalties were established for H-1B violations on a three tier system: (1) the first tier would encompass non-willful conduct, or less substantial violations such as failure to meet strike, lockout or layoff attestations; failure to meet notice or recruitment attestations; or misrepresentation of a material fact on a labor condition application, and would result in fines of not more than \$1,000 per violation and result in the mandatory debarment of at least one year. *See* ACWIA § 413(a) incorporated at § 212(n)(2)(C)(i) of the Act; (2) willful violations, such as willful failure to meet any attestation condition; willful misrepresentation; or actions taken in retaliation against whistleblowers, which would result in a fine of not more than \$5,000 per violation, and mandatory debarment of two years. *See* ACWIA § 413(a) incorporated at § 212(n)(2)(C)(ii) of the Act; and (3) willful violations that result in layoffs, such as a violation of the attestation, or misrepresentation of a material fact in the course where an employer displaces a U.S. worker, which would result in a fine not to exceed \$35,000 per violation, and mandatory debarment of at least three years. *See* ACWIA § 413(a) incorporated at § 212(n)(2)(C)(iii) of the Act.