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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: **AUG 22 2012** Office: TEXAS 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition as well as a subsequent motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a convenience store and seeks to employ the beneficiary permanently in the United States as a manager pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). 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 director denied the petition and the subsequent motion to reopen/reconsider finding the petitioner had not established its continuing ability to pay the proffered wage since the priority date.

The appeal was filed by [REDACTED] Atlanta, Georgia, who submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the petitioner on August 4, 2009. Mr. [REDACTED] claimed to have been appointed by the petitioner in these proceedings to function:

as a consultant, an agent and/or representative or representation for employer/employee for processing various [United States Citizenship and Immigration Services] USCIS forms and filing the forms with USCIS, [Administrative Appeals Unit] AAU, [Board of Immigration Appeals] BIA, [Executive Office for Immigration and Review] EOIR for it's [sic] clients.

The regulation governing representation in filing immigration petitions and/or applications with 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, disbaring, 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. § 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 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.

On July 5, 2012, this office issued a notice quoting the above regulations and advising that Mr. [REDACTED] according to the checked box on the Form G-28 and a review of the most recent Roster of Recognized Organizations and Accredited Representatives maintained by the Executive Office for Immigration and Review, available on the Internet at <http://www.usdoj.gov/eoir/statspub/raroster.htm> (accessed June 26, 2012), was not an attorney or an accredited representative of an organization recognized by the BIA. Mr. [REDACTED] were provided 15 days in which to reply and advised that failure to respond would result in the appeal being rejected as improperly filed. As of the date of this decision, neither [REDACTED] have responded to the AAO's notice.

The appeal has not been signed and filed by the petitioner, an authorized representative or any entity with legal standing in the proceeding, but rather by an unauthorized person. Therefore, the appeal has not been properly filed and must be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

In the alternative, the appeal must be rejected because it has been untimely filed. In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must submit the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of submission, but the date of actual receipt with the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i).

The director issued the decision denying the motion to reconsider on October 1, 2009. The director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The Form I-290B, Notice of Appeal or Motion, was received by the service center on January 21, 2010, or one-hundred twelve days after the decision was issued. Accordingly, the appeal was untimely filed.

Therefore, as the appeal was both untimely and not properly filed, it will be rejected.

Finally, even if the appeal had been timely filed by the petitioner, an authorized representative, or any entity with legal standing in the proceeding, the appeal would be dismissed because the petitioner failed to file the petition with a valid labor certification pursuant to 8 C.F.R. § 204.5(l)(3)(i).

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The labor certification is evidence of an individual alien's admissibility under section 212(a)(5)(A)(i) of the Act, which provides:

In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The regulation at 20 C.F.R. § 656.11 states the following:

Substitution or change to the identity of an alien beneficiary on any application for permanent labor certification, whether filed under this part or 20 CFR part 656 in effect prior to March 28, 2005, and on any resulting certification, is prohibited for any request to substitute submitted after July 16, 2007.

Additionally, the regulation at 20 C.F.R. § 656.30(c)(2) provides:

A permanent labor certification involving a specific job offer is valid only for the particular job opportunity, the alien named on the original application (unless a substitution was approved prior to July 16, 2007), and the area of intended employment stated on the *Application for Alien Employment Certification* (Form ETA 750) or the *Application for Permanent Employment Certification* (ETA Form 9089).

The Act does not provide for the substitution of aliens in the permanent labor certification process. The DOL's regulation became effective July 16, 2007 and prohibits the substitution of alien beneficiaries on permanent labor certification applications and resulting certifications, as well as prohibiting the sale, barter, or purchase of permanent labor certifications and applications. The rule continues the DOL's efforts to construct a deliberate, coordinated fraud reduction and prevention framework within the permanent labor certification program. *See* 72 Fed. Reg. 27904 (May 17, 2007).

As the filing of the instant case was after July 16, 2007, the petitioner is not able to substitute the beneficiary. The petition was, therefore, filed without a valid certified labor certification pursuant to 8 C.F.R. § 204.5(l)(3)(i).

ORDER: The appeal is rejected.