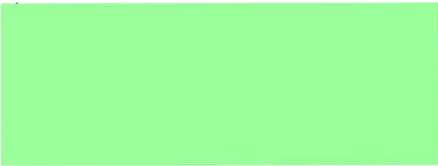


(b)(6)

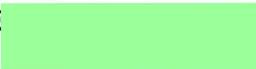
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



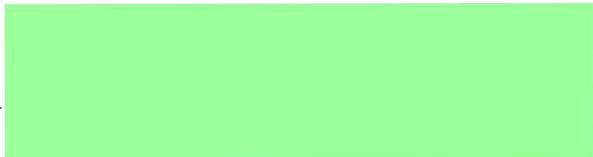
DATE: **DEC 26 2012**

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:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) subsequently dismissed the appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen and reconsider appeal will be dismissed pursuant to 8 C.F.R. § 103.5(a)(1)(iii)(A).

The petitioner makes structural miscellaneous iron work. It seeks to permanently employ the beneficiary in the United States as a welder. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

The director's decision denying the petition concludes that the petitioner failed to establish its continuing ability to pay the proffered wage. The AAO concurred and dismissed the appeal. The AAO further found that the portability provisions of the *American Competitiveness in the Twenty-First Century Act of 2000* (AC21)(Public Law 106-313) do not apply to this proceeding.

The provisions at 8 C.F.R. § 103.3(a)(2)(v)(A) provides in relevant part:

- (1) *Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.
- (2) *Appeal by attorney or representative without proper Form G-28-(i) General.* 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. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

The provisions of 8 C.F.R. § 103.5(a)(1) states in relevant part:

- (iii) *Filing Requirements-*A motion shall be submitted on Form I-290B and may be accompanied by a brief. It must be:
 - (A) In writing and signed by the affected party or the attorney or representative of record, if any;

The regulation of 8 C.F.R. § 103.5(a) also states in relevant part:

- (3) *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed. Where a motion to reopen is granted, the proceeding shall be reopened. The notice and any favorable decision may be combined.

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

(B) *Meaning of affected party.* 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.

Counsel filed the motion to reopen and reconsider the appeal on behalf of the beneficiary. Counsel submitted a Form G-28 with the motion to reopen and reconsider the appeal signed only by the beneficiary, not the petitioner. Counsel signed Form I-290B. Nothing shows that the petitioner assented to the filing. This office faxed a request to counsel to provide a properly executed Form G-28 signed by the petitioner indicating that it was authorizing the motion to reopen and reconsider the appeal. Counsel was allowed ten (10) calendar days to provide a response. Nothing further has been received by this office.

Therefore, the motion to reopen and reconsider the appeal was not properly filed by the affected party. Further, the motion to reopen was filed without a properly executed Form G-28 authorizing counsel to file the appeal on behalf of the affected party. The motion to reopen and reconsider the appeal does not meet the applicable requirements and will be dismissed. 8 C.F.R. § 103.5(a)(1)(iii)(A).

ORDER: The motion to reopen and reconsider the appeal is dismissed.