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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: **MAY 14 2012** OFFICE: TEXAS SERVICE CENTER

FILE:



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 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 with the field office or service center that originally decided your case by filing a 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The appeal was dismissed by the Administrative Appeals Office (AAO). Counsel to the beneficiary filed a motion to reopen the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be dismissed pursuant to 8 C.F.R. § 103.5(a)(1)(iii)(A) and 8 C.F.R. § 103.5(a)(4).

The petitioner is a trucking and transportation business. It seeks to employ the beneficiary permanently in the United States as a truck driver. 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 determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly. The AAO dismissed the subsequently filed appeal of the director's decision on February 9, 2011. A motion to reopen the AAO's denial was filed by counsel to the beneficiary on March 9, 2011.

In this matter, the motion to reopen shall be dismissed for failing to meet two applicable requirements. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motion to reconsider. Section 103.5(a)(1)(iii)(A) requires that motions be "signed by the affected party or the attorney or representative of record, if any." Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding."

It is noted from the record that the motion was not signed by the affected party or its counsel. The Form G-28, Entry of Appearance as Attorney or Representative, dated March 9, 2011, which was submitted for the record, only entered the appearance of counsel for the beneficiary, and not for the petitioner. It is further noted that the beneficiary's signature, not the petitioner's corporate representative's signature, appears on the Form G-28. USCIS regulations specifically prohibit a beneficiary of a visa petition, or a representative action on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). As the beneficiary and his representative are not recognized parties, counsel is not authorized to file a motion. 8 C.F.R. § 103.5(a)(1)(iii)(A).

Moreover, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C) regarding judicial proceedings.

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. §§ 103.5(a)(1)(iii)(A) and (C), it must be dismissed for these reasons.

Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.