

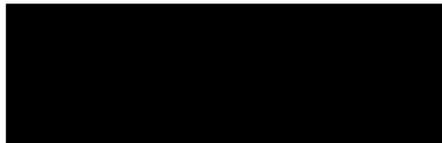
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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DATE: OFFICE: TEXAS SERVICE CENTER
MAY 31 2012

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,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: On June 7, 2002, United States Citizenship and Immigration Services (USCIS), Vermont Service Center (VSC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the VSC director on July 21, 2003. However, the Director of the Texas Service Center (the director) revoked the approval of the immigrant petition on May 19, 2009. The beneficiary of the employment-based immigrant visa petition, through his counsel, subsequently appealed the director's decision to the Administrative Appeals Office (AAO). The appeal will be rejected as improperly filed since neither the beneficiary nor his counsel is entitled to file the appeal in this proceeding, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1). *See infra*. The revocation of the approval of the petition will not be disturbed.

The petitioner describes itself as a [REDACTED]. It seeks to permanently employ the beneficiary in the United States as a stonecutter, Dictionary Occupational Title (DOT) job code 771.381-014. 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). 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 revoked the approval of the petition finding that the petitioner failed to establish that it properly followed the DOL's recruitment requirements and that both the petitioner and the beneficiary were involved in submitting documents that contained willful misrepresentation or fraudulent information.

On appeal, counsel for the beneficiary, [REDACTED] contends that the beneficiary qualifies for the position offered and that the petitioner conducted the recruitment in good faith.¹ The following evidence is offered to demonstrate that the contention above is credible:

- A sworn statement dated August 12, 2009 from the beneficiary's former employer in Brazil, [REDACTED] attesting to the beneficiary's employment as a stonecutter from June 18, 1996 to May 15, 1999;
- Two pictures showing the premises of [REDACTED] and [REDACTED]
- A letter dated July 27, 2009 from [REDACTED] owner of the petitioner, stating that he followed all of the DOL's advertising requirements and that the Form ETA 750 was certified by the DOL as a result of his compliance on May 9, 2002.

¹ The AAO notes that the petitioner is represented by [REDACTED] in this proceeding. [REDACTED] however, was suspended from practice of law before the Immigration Courts, Board of Immigration Appeals (BIA), and Department of Homeland Security (DHS) for a period of three years from March 1, 2012 to February 28, 2015. Although [REDACTED] representations in this matter will be considered, [REDACTED] will not be sent a copy of this decision.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

As a threshold issue, before the AAO can adjudicate the subject matter of the appeal, we must determine whether the beneficiary or any other party has legal standing to appeal in this proceeding.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) unequivocally states:

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.** (Emphasis added).

Further, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1) states, “An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed.”

The language of the cited regulations explicitly states that neither the beneficiary nor his counsel has legal standing in this visa petition proceeding, and neither is authorized to file the appeal in this matter. Here, the appeal was authorized by the beneficiary and filed by the beneficiary’s counsel.

Because the beneficiary and his counsel are not entitled to appeal the director’s decision in this proceeding, the appeal was not properly filed, and the appeal must be rejected. Further, since the appeal is rejected, we will not elaborate on the question of whether the beneficiary qualifies for the position offered and whether the labor certification involved fraud or misrepresentation.

ORDER: The appeal is rejected as improperly filed. The director’s decision to revoke the approval of the petition remains undisturbed.

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).