

(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 **JAN 15 2013** 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.

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 petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the petitioner's appeal. The petitioner filed a motion requesting that the AAO reopen and reconsider the dismissal. The motion will be rejected.

The petitioner describes itself as a radiator repair business. It seeks to employ the beneficiary permanently in the United States as an auto specialty technician. The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, certified by the U.S. Department of Labor (DOL).

The director's decision denying the petition concludes that the petitioner did not establish its ability to pay the proffered wage. The petitioner appealed the director's decision to the AAO. The AAO dismissed the appeal on January 12, 2010. In dismissing the appeal, the AAO assessed the totality of the circumstances in the case and confirmed the director's conclusion that the petitioner had not established that it had the continuing ability to pay the proffered wage.

The petitioner subsequently attempted to file the instant motion on February 16, 2010. All documents submitted to U.S. Citizenship and Immigration Services (USCIS) must be executed and filed in accordance with the instructions on the form. 8 C.F.R. § 103.2(a)(1). The instructions to Form I-290B, Notice of Appeal or Motion, state that the petitioner or its representative must sign Form I-290B.

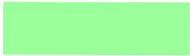
In this matter, the petitioner attempted to file a motion with an unsigned Form I-290B. An application or petition which is not properly signed shall be rejected as improperly filed. 8 C.F.R. § 103.2(a)(7)(i). As the Form I-290B is unsigned, the motion must be rejected.

Even if the motion was not rejected, it does not appear that the motion and the underlying petition are approvable. The beneficiary is the son of a 50% shareholder of the petitioner. In January 2001, the 50% owner, [REDACTED] filed a Form I-130, Petition for Alien Relative, requesting a visa for the beneficiary as the unmarried child (21 or older) of a U.S. Citizen. This casts doubt upon whether a valid employment relationship exists, and that a *bona fide* job opportunity is available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." See *Matter of Sunmart* 374, 00-INA-93 (BALCA May 15, 2000). It appears that the petitioner attempted conceal the familial relationship from the DOL and USCIS by having the other 50% shareholder sign all documents related to the Form ETA 750 and the petition.

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<sup>1</sup> The petitioner's tax returns show that [REDACTED] is a 50% shareholder and lists his Social Security Number. The same Social Security Number was listed on the Form I-130 filed with USCIS in January 2001.

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The AAO will forward the Form ETA 750 to the DOL for a determination of whether or not the certification should be revoked. A Certifying Officer may revoke an approved labor certification, if the certification was not justified. 20 C.F.R. § 656.32(a).

**ORDER:** The motion is rejected.