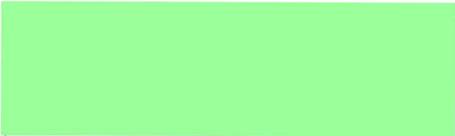


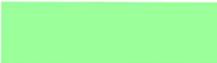


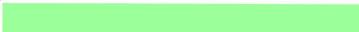
**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **MAR 27 2013** OFFICE: NEBRASKA 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:** On July 26, 2004, 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 March 13, 2006. The director of the Texas Service Center (the director), however, revoked the approval of the immigrant petition on December 28, 2009. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The petitioner describes itself as a roofing contracting company. It seeks to permanently employ the beneficiary in the United States as a copper worker. The petitioner requests classification of the beneficiary as a 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 revoking the approval of the petition states that discrepancies in the record indicated that the petitioner submitted falsified documents to establish that the beneficiary had the experience required by the terms of the labor certification.

The record of proceeding contains a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, for the representative of the beneficiary. Additionally, the Form I-290B, Notice of Appeal or Motion, was signed by the same representative. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically prohibits a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. There is no evidence in the record that the petitioner consented to the filing of the appeal.<sup>1</sup>

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.<sup>2</sup>

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

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B), in pertinent part, 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

<sup>1</sup> The AAO notes that the director in the revocation decision states that the response to the Notice of Intent to Revoke was received from the beneficiary's counsel.

<sup>2</sup> 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).

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 explicit language of the regulations noted above suggests that the beneficiary and/or his counsel would not have legal standing and would not be authorized to file the appeal in this matter.

Here, the appeal was authorized by the beneficiary and filed by counsel for the beneficiary, and no evidence in the record suggests that the petitioner consented to the filing of the appeal. Thus, the beneficiary is not entitled to appeal in this proceeding. As no evidence of record suggests that the original petitioner consented to the filing of the appeal, the appeal was improperly filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1) and must be rejected.

Because the appeal is rejected, we will not elaborate on whether the beneficiary had the requisite work experience before the priority date, whether the petitioner had the continuing ability to pay the proffered wage from the priority date, and whether the director's decision to revoke the approval of the petition was based on good and sufficient cause, in accordance with Section 205 of the Act, 8 U.S.C. § 1155.

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