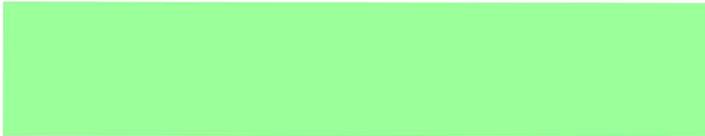




U.S. Citizenship
and Immigration
Services

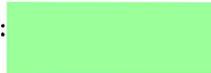
(b)(6)



DATE:

OFFICE: TEXAS SERVICE CENTER
MAR 29 2013

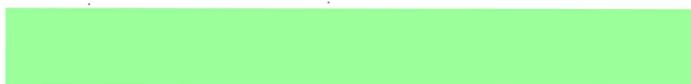
FILE:



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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition. 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)(I).

The petitioner describes itself as a restaurant. It seeks to permanently employ the beneficiary in the United States as a chef (specialty food). 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 has not established that it had the ability to pay the beneficiary the proffered wage from the priority date onward.

The Form I-290B, Notice of Appeal or Motion, was received on September 8, 2011. Effective March 4, 2010, the regulation at 8 C.F.R. § 292.4(a) requires that a new Form G-28 "must be filed with an appeal filed with the [AAO]." 8 C.F.R. § 292.4(a) further requires that the Form G-28 "must be properly completed and signed by the petitioner, applicant or respondent to authorize representation in order for the appearance to be recognized by DHS." The record, however, does not contain a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, signed by an authorized official of the petitioning entity dated subsequent to the director's decision and submitted to authorize your representation of the petitioner on appeal.

Moreover, the record of proceeding contains a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, for the beneficiary's representative. Additionally, the Form I-290B, Notice of Appeal or Motion, was signed by the beneficiary's 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.

On March 11, 2013, the AAO sent the beneficiary's representative, [REDACTED] a request for a Form G-28 signed by the petitioner, consenting to the appeal and representation by [REDACTED]. The AAO specifically advised that "without a new valid and fully executed Form G-28 signed by an official of the petitioning entity authorizing [REDACTED] to represent the petitioner, we cannot consider the appeal to have been properly filed." As of the date of this letter, no response has been received.

As the appeal was not properly filed, and it is unclear whether or not the petitioner consented to having an appeal filed on its behalf, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

ORDER: The appeal is rejected.