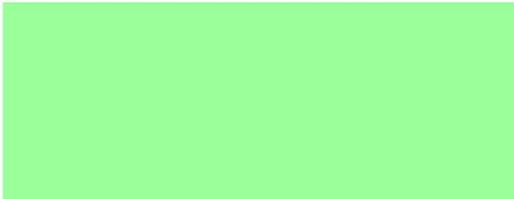


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: **MAY 24 2013**

OFFICE: TEXAS SERVICE CENTER

FILE

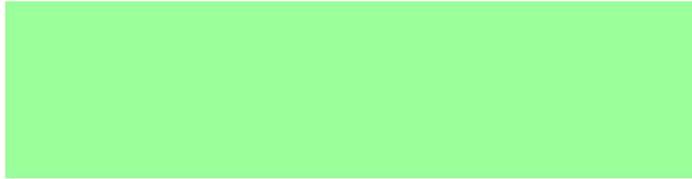


IN RE: Petitioner:  
Beneficiary:



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 immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is an exterminating service. It seeks to employ the beneficiary permanently in the United States as a termite exterminator. 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).<sup>1</sup> The director determined that the petitioner had not established that the labor certification supported classification as a skilled worker. The director denied the petition accordingly.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

A review of the record shows that the petition has not been properly filed; therefore, there is no legitimate basis to continue with this proceeding. The Form I-140 petition identifies [REDACTED] as the employer and the petitioner. In this instance, no employee or officer of [REDACTED] signed the Form I-140 visa petition.

The petition was electronically filed and contains the electronic signature of [REDACTED] as petitioner. However, [REDACTED] was the beneficiary's representative.<sup>2</sup> Therefore, an individual other than an authorized official of [REDACTED] signed Part 8 of the Form I-140, in the block provided for "Petitioner's Signature," thereby seeking to file the petition on behalf of the actual United States employer. However, the regulations do not permit any individual who is not the petitioner to sign Form I-140 on behalf of a United States employer.

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<sup>1</sup> The petition was accompanied by a request that United States Citizenship and Immigration Services (USCIS) obtain a duplicate labor certification from the Department of Labor (DOL) and a duplicate labor certification was obtained.

<sup>2</sup> The Form I-140 petition was accompanied by a Form G-28 electronically signed by the beneficiary authorizing [REDACTED] to be his attorney; however, the Form I-140 petition was not accompanied by a Form G-28 executed by [REDACTED]

The regulation at 8 C.F.R. § 204.5(c) provides:

*Filing petition.* Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The regulation at 8 C.F.R. § 204.5(a)(1) provides that a petition is properly filed if it is accepted for processing under the provisions of 8 C.F.R. § 103. The regulation at 8 C.F.R. § 103.2(a)(2) provides:

*Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the BCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

An earlier version of the regulation at 8 C.F.R. § 204.1(d), as in effect in 1991, provided, in pertinent part:

Before the petition may be accepted and considered properly filed, the petitioner *or authorized representative* shall sign the visa petition (under penalty of perjury) in the block provided on the form.

(Emphasis added.) The regulation at 8 C.F.R. § 204.1(d) no longer includes language that would allow an authorized representative to sign a petition, although we acknowledge that this provision now relates only to immediate relative and family based petitions. In contrast, the filing requirements for employment-based immigrant petitions are now found at 8 C.F.R. § 204.5(a). The regulation at 8 C.F.R. § 204.5(a)(1) provides that such petitions must be accepted for processing under the provisions of 8 C.F.R. § 103. As stated above, the regulation at 8 C.F.R. § 103.2(a)(2) provides that the petitioner must sign the petition and does not include the “or authorized representative” language that previously applied to Forms I-140 until 1991. Had legacy Immigration and Naturalization Service, now USCIS, intended to continue to allow authorized representatives to sign Form I-140 petitions, the language expressly allowing them to do so would not have been removed.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The petition has not been properly filed because the petitioning U.S. employer, [REDACTED] did not sign the petition.

Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at \*3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

USCIS and legacy INS have required that an authorized employee of the U.S. petitioning employer must sign the Form I-140 petition on behalf of the petitioning employer since 1991 when legacy INS removed the “or authorized representative” language. The signature requirement reflects a genuine Form I-140 program concern regarding the validity of the permanent job offers contained in Form I-140 petitions. To this end, the employer’s signature serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.<sup>3</sup>

The AAO notes that an entirely separate line exists for the signature of the preparer declaring that the form is “based on all information of which [the preparer has] knowledge.” Thus, the Form I-140 itself acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Moreover, we note that the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney’s unsupported assertions on the petition and the job offer have no evidentiary value.

The petition has not been properly filed by a United States employer. Therefore, we must reject the appeal. Even if the appeal was not rejected, it would be dismissed because it was not filed with a valid labor certification,<sup>4</sup> the labor certification did not support the classification sought by the petitioner,<sup>5</sup> the

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<sup>3</sup> The signature line on the Form I-140 for the petitioner provides that the petitioner is certifying, “under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct.”

<sup>4</sup> The Form I-140 petition was filed on July 10, 2009 utilizing a labor certification approved by the DOL on June 4, 2007. The regulation at 20 C.F.R. § 656.30(b)(2) provides: “An approved permanent labor certification *granted before July 16, 2007 expires* if not filed in support of a Form I-140 petition with the Department of Homeland Security *within 180 calendar days of July 16, 2007.*” (Emphasis added). 725 days passed after July 16, 2007 and prior to the filing of the petition with USCIS. As the filing of the instant case was after 180 days of July 16, 2007, the petition was, therefore, filed without a valid labor certification pursuant to 8 C.F.R. § 204.5(l)(3)(i).

<sup>5</sup> The regulation at 8 C.F.R. § 204.5(l) provides in pertinent part:

- (4) Differentiating between skilled and other workers. The determination of whether a worker is a skilled or other worker will be based on the requirements of training

petitioner did not establish its continuing ability to pay the proffered wage,<sup>6</sup> and the petitioner did not establish that the beneficiary had the education required for the proffered position.<sup>7</sup>

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and/or experience placed on the job by the prospective employer, as certified by the Department of Labor.

In this case, the labor certification indicates that the proffered job of termite exterminator requires 8 years of grade school and 2 years of high school education. There are no training or experience requirements for the proffered position. However, the petitioner requested the skilled worker classification on the Form I-140. There is no provision in statute or regulation that compels USCIS to readjudicate a petition under a different visa classification in response to a petitioner's request to change it, once the decision has been rendered. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988). The evidence submitted does not establish that the petition requires at least two years of training or experience such that the beneficiary may be found qualified for classification as a skilled worker.

<sup>6</sup> The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage of \$15.47 per hour (\$32,177.60 per year) beginning on the priority date of September 29, 2001. The petitioner did not submit any regulatory-prescribed evidence of its ability to pay the proffered wage for 2002. Instead, it submitted unaudited financial statements for 2002, accompanied by an unsigned report from [REDACTED] dated January 10, 2003, indicating that the financial statements were not audited or reviewed. The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage. Therefore, the petitioner has not established its continuing ability to pay the proffered wage.

<sup>7</sup> To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Acting Reg'l Comm'r 1977). The regulation at 8 C.F.R. § 204.5(l)(3) requires petitions for skilled workers and other workers to be accompanied by evidence that the beneficiary meets the educational, training or experience, and any other requirements of the individual labor certification.

**ORDER:** The appeal is rejected.

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The labor certification indicates that the proffered job requires 8 years of grade school and 2 years of high school education. The record contains no evidence regarding the beneficiary's education. Therefore, the petitioner has not established that the beneficiary had the education required for the proffered position.