

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



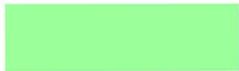
U.S. Citizenship
and Immigration
Services

(b)(6)

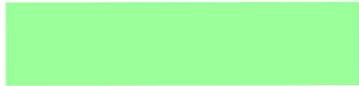


DATE: SEP 27 2013

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition on April 26, 2012. The matter was submitted to the Administrative Appeals Office (AAO) on appeal, and the director's decision was affirmed by the AAO on June 14, 2013. The matter is again before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner describes itself as a retail jewelry store. It seeks to permanently employ the beneficiary in the United States as a bookkeeper. 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 did not demonstrate the ability to pay the proffered wage to the beneficiary from the priority date onward. Beyond the decision of the director, the AAO also concluded that the petitioner did not establish that the beneficiary possessed the required experience as set forth in the labor certification as of the priority date.

The Form I-290B, Notice of Appeal or Motion, dated, July 10, 2013, was signed by the beneficiary, and Part 3 of that form states, "I am filing my petition myself." A letter accompanying the motion, dated July 10, 2013, from the beneficiary also confirms that the beneficiary is filing the instant motion himself. The letter states, in part, "I am requesting the INS to please reconsider and approve my case," and is signed by the beneficiary and indicates the beneficiary's name, home address, and telephone number beneath the beneficiary's signature. The regulations 8 C.F.R. § 103.3(a)(1)(iii) indicate that for the purposes of sections 8 C.F.R. §§ 103.3 and 103.5, the term affected party "does not include the beneficiary of a visa petition." The regulations therefore prohibit the beneficiary of an employment based visa petition, or a representative acting on that beneficiary's behalf, from filing a motion. *See* 8 C.F.R. § 103.5 (a)(1)(i) (motions may be filed by only by the affected party). There is no evidence in the record that the petitioner consented to the filing of the motion to reopen and reconsider, filed on July 17, 2013; rather, the evidence in the record indicates the instant motion was filed by the beneficiary.

As the motion to reopen and reconsider was not properly filed, and it is unclear whether or not the petitioner consented to having a motion filed on its behalf, it will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen and reconsider is dismissed.