

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)

[REDACTED]

DATE: FEB 12 2014 OFFICE: TEXAS SERVICE CENTER [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: On August 1, 2002, United States Citizenship and Immigration Services (USCIS), received a Form I-140, Immigrant Petition for Alien Worker, from the petitioner. The employment-based immigrant visa petition was initially approved by the Director, Vermont Service Center (VSC) on March 25, 2003. However, the Director, Texas Service Center (the director) revoked the approval of the visa petition on May 8, 2009, and the petitioner subsequently appealed the director's decision to the Administrative Appeals Office (AAO). The AAO withdrew the director's decision and remanded the petition to the director for further action. The matter is again before the AAO on a Motion to Reconsider (MTR). The MTR will be dismissed.

The petitioner describes itself as a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).

On appeal, the AAO withdrew the director's decision, finding that the petitioner had been provided insufficient notice of the derogatory evidence on which the revocation was based. However, it also concluded that the record failed to demonstrate the beneficiary's qualifications for the offered position, the petitioner's ability to pay the proffered wage or that the beneficiary's current employer was a successor-in-interest to the petitioner, which had been involuntarily dissolved on June 18, 2012. The matter was remanded to the director for further consideration and the entry of a new decision.

The record of proceeding contains properly executed Forms G-28, Notices of Entry of Appearance as Attorney or Accredited Representative, for [REDACTED] which reflect that he represents the beneficiary of the instant petition, as well as [REDACTED], the beneficiary's current employer and [REDACTED], the beneficiary's prospective employer. The MTR, i.e., the Form I-290B, Notice of Appeal or Motion, is signed by [REDACTED].

The regulation at 8 C.F.R. § 103.5(a)(1) allows for the filing of motions to reopen and motions to reconsider by the "affected party" in an immigration proceeding, which is defined at 8 C.F.R. 103.3(a)(1)(iii)(B), as follows:

(B) Meaning of affected party. 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 proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative

In the present case, neither the beneficiary of the instant visa petition, nor the [REDACTED] or [REDACTED] is an affected party. As noted above, the regulation at 8 C.F.R. § 103.5(a)(1) specifically excludes the beneficiary of a visa petition from the definition of affected party, and the [REDACTED] are not established by the record as successors-in-interest to Input-Output, Ltd. dba [REDACTED], the petitioner. Therefore, the AAO does not find [REDACTED] to represent an affected party in this proceeding.

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A motion that does not meet the applicable requirements shall be dismissed. *See* 8 C.F.R. § 103.5(a)(4). In that [REDACTED] does not represent a party with legal standing in this matter, the MTR he submitted on February 27, 2013 is not properly filed and will be dismissed.

ORDER: The MTR is dismissed.