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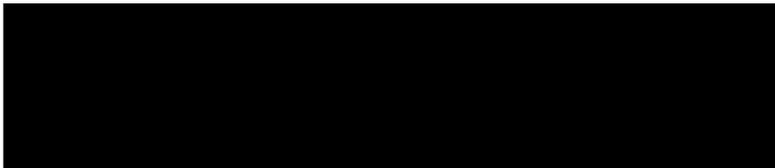
FILE: WAC 04 006 53577 Office: CALIFORNIA SERVICE CENTER Date: APR 26 2006

IN RE: Petitioner:
Beneficiary



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) rejected the appeal without rendering a decision because the appeal was filed by counsel on behalf of the beneficiary who is not a recognized party in these proceedings pursuant to 8 C.F.R. § 103.2(a)(3). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The petitioner is a hotel that seeks to employ the beneficiary as a marketing director. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on August 3, 2004. On September 7, 2004, counsel for the beneficiary filed an appeal seeking review of the director's decision. After reviewing the record, the AAO rejected the appeal as having been improperly filed by counsel on behalf of the beneficiary. The Form G-28, Entry of Appearance as Attorney or Representative, that was submitted in conjunction with the filing of the appeal was signed by the beneficiary, not by an authorized representative of the petitioner. Counsel noted on the I-290B (Notice of Appeal) that he represented the beneficiary, not the petitioner. A G-28 signed by the petitioner was not submitted with the filing of the appeal. Citizenship and Immigration Services (CIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition. The beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). As the beneficiary and his representative are not recognized parties, counsel is not authorized to file an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). As the appeal was not properly filed, it was properly rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The petitioner has now filed a motion seeking to reconsider the rejected appeal.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The petitioner, on appeal, has not indicated by precedent decision or policy memorandum that the AAO's decision was incorrect when issued. Thus, the motion to reconsider will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to sustain that burden and the motion shall accordingly be dismissed.

ORDER: The motion is dismissed.