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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**

PUBLIC COPY



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Date: **SEP 07 2011**

Office: CALIFORNIA SERVICE CENTER

FILE: 

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 BENEFICIARY:



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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition, and dismissed a subsequent motion to reopen/reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is an agricultural, dried goods, and nuts importer that seeks to employ the beneficiary in the position of financial manager.¹ Accordingly, 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, finding that the petitioner had failed to establish that: (1) the proffered position qualified as a specialty occupation; and (2) the offer of employment to the beneficiary was reasonable and credible. On January 10, 2011, counsel for the beneficiary filed a timely Form I-290B, Notice of Appeal or Motion, and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received a brief or any additional evidence into the record. Therefore, the record is considered complete as currently constituted.

The Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, that was submitted for the record in support of the appeal was signed by the beneficiary, not by the petitioner or an authorized representative thereof. U.S. Citizenship and Immigration Services (USCIS) 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). In this case, the Form G-28 that was submitted for the record was signed by the beneficiary in her personal capacity and does not list the petitioner as a party being represented by counsel in these proceedings.²

An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(A)(I). As the beneficiary and her counsel are not recognized parties, counsel is not authorized to file an appeal. *Id.*; 8 C.F.R. § 103.3(a)(1)(iii)(B).

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

It should be noted that, in the event that the appeal had been filed by an authorized representative of the petitioner, the appeal would have been summarily dismissed. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). In this matter, counsel indicated on Form I-290B that it would submit a brief and/or additional evidence to the AAO by April 10, 2011. As of this date and as noted above, however, the AAO has not received a brief or any additional evidence into the record. As counsel failed to present a brief or additional

¹ It should be noted that, according to the California Secretary of State, the petitioner is dissolved. Therefore, the issue of the company's continued existence as a legal entity in the United States is in question.

² The AAO notes that the Form G-28 submitted in support of the petition was also signed by the beneficiary in her personal capacity on May 24, 2010, and also did not list the petitioner as a party being represented by counsel in these proceedings.

evidence on appeal that specifically identifies an erroneous conclusion of law or statement of fact as a basis for the appeal, it would alternatively have been summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

ORDER: The appeal is rejected.