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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D3

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FILE: EAC 07 214 52472 Office: VERMONT SERVICE CENTER Date: FEB 29 2008

IN RE: Petitioner: [Redacted]
Beneficiaries: [Redacted]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected, although the petition is moot due to the passage of time.

The petitioner is a resort hotel that filed this petition in order to continue to employ and extend the stay of three aliens as housekeepers from April 1, 2007 to October 31, 2007, in accordance with the provisions for H-2B temporary nonagricultural workers at Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b), and its implementing regulations at 8 C.F.R. § 214.2(h)(6).

The petitioner attested that the three workers named in the petition were already in the United States in H-2B status, working for another employer, and that they would replace H-2B housekeepers who failed to report for work. In support of the petition, the petitioner submitted a Department of Labor (DOL) certification for H-2B temporary employment, for 15 housekeepers, that encompasses the employment period for which the present petition was filed. The service center director denied the petition on the basis that the temporary employment certification had also been submitted for the petitioner's prior petition, which had been approved for all of the 15 housekeepers for which DOL had issued the certification. The director determined that under such circumstances the temporary labor certification is no longer valid, stating: "A new temporary labor certification, certified at the time of filing, is necessary to petition for additional workers unless the petitioner requests substitutions from the consular office." As the appeal will be rejected, the AAO shall not address its merits.

As mandated by regulation, the AAO will reject the appeal because it was filed by a person not authorized to appear before Citizenship and Immigration Services (CIS) on behalf of any person or entity. The CIS regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(I) provides that an appeal filed with CIS by a person not entitled to file it "must be rejected as improperly filed."

The regulation at 8 C.F.R. § 292.1 identifies the classes of persons entitled to appear before CIS in a representative capacity.

The Form I-290B (Notice of Appeal) was signed by a [REDACTED] on behalf of Overseas Manpower Management of New Port Richey, Florida.

A person appearing before USCIS in a representative capacity must file a Form G-28 (Notice of Entry of Appearance as Attorney or Representative), signed by the petitioner, that identifies the provisions of 8 C.F.R. § 292.1 under which he or she is entitled to represent the petitioner before CIS. See 8 C.F.R. § 292.4(a).

The record of proceeding contains a Form G-28 signed by the petitioner. The Form G-28 identifies the petitioner's representative as [REDACTED], who is the person who signed the Form I-290B and filed the appeal. The unchecked boxes on the form indicate that [REDACTED] is neither an attorney nor an accredited representative of an organization recognized by the Board of Immigration Appeals. At section 4 of the form, [REDACTED] states: "Authorized agent/representative." However, she does not identify any provision of 8 C.F.R. § 292.1 under which she is entitled to represent the petitioner before CIS.

By letter dated February 8, 2007, the AAO provided [REDACTED] 15 days in which to (1) identify the provision(s) of 8 C.F.R. § 292.1 under which she qualified to represent the petitioner, and (2) documentary proof of her qualification under whatever provision(s) of 8 C.F.R. § 292.1 she cites as authorizing her to appear in a representative capacity on this appeal. The letter notified [REDACTED] that the AAO would reject the appeal as improperly filed if, within fifteen 15 days, she failed to submit persuasive evidence of her entitlement to file an appeal for the petitioner. As of this date, the AAO has received no reply from [REDACTED]

The record fails to establish that the person who filed the appeal was authorized to appear as a representative in accordance with the provisions of 8 C.F.R. § 292.1. Accordingly, the AAO will reject the appeal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I), which states:

An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed.
In such a case, any filing fee the Service accepted will not be refunded.

As an administrative matter, the AAO notes that the appeal is moot, due to the passage of time, as the period of intended employment has already lapsed.

ORDER: The appeal is rejected, although the petition is moot due to the passage of time.