



U.S. Citizenship  
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Services

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FILE: SRC 05 800 23652 Office: TEXAS SERVICE CENTER Date: **AUG 18 2006**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

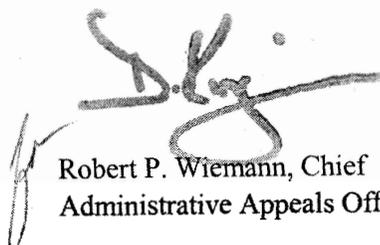
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the nonimmigrant visa petition in a decision dated March 15, 2006. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to Citizenship and Immigration Services [CIS]) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Further, the regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

*Improperly filed appeal – (A) Appeal filed by person or entity not entitled to file it – (1) Rejection without refund of filing fee.* 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 CIS has accepted will not be refunded.

In this instance, the appeal was filed by attorney [REDACTED]. Although [REDACTED] indicates on the Form I-290B that he represents the petitioner and the beneficiary, the record contains no Form G-28 indicating counsel's representation of the petitioner. The only Form G-28 noted in the record is dated April 14, 2005, which contains the beneficiary's name in the "Name of Person Consenting" box. While counsel signed the Form I-129 indicating his preparation of the form, the preparation of this petition is not tantamount to filing notice of his appearance on behalf of the petitioner. See 8 C.F.R. § 292.4(a). No Form G-28 was submitted on appeal.

It is further noted that on July 24, 2006 counsel was notified by facsimile that the record lacked the appropriate notice of representation. Although counsel was given the opportunity to remedy this deficiency, to date, no further submission has been received by counsel.

As it presently stands, the appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by counsel for the beneficiary, who personally signed the I-290B Notice of Appeal, and identified himself, rather than the petitioner, as the "Person Filing Appeal." While the director erroneously acknowledged counsel as representing the petitioner, we are not bound to perpetuate this error on appeal. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

As cited in the regulation above, the beneficiary is not considered to be an affected party. As the appeal was filed by counsel for the beneficiary and there is no evidence that counsel also represents the petitioner, the appeal has not been properly filed, and must be rejected, pursuant to the above regulations.

**ORDER:** The appeal is rejected.