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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 00 252 51502 Office: VERMONT SERVICE CENTER Date: FEB 11 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

IN BEHALF OF BENEFICIARY: SELF-REPRESENTED

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The petitioner sought classification as an employment-based immigrant pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. Because the alien beneficiary filed the petition on his own behalf, the petition could only be considered in the context of a request for an exemption from the requirement of a job offer, and thus of a labor certification, in the national interest of the United States. The director found that the petitioner failed to establish eligibility either for the classification sought or for the exemption from the requirement of a job offer.

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 the Service) means the person or entity with legal standing in a proceeding.

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 the Service has accepted will not be refunded.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the president of the company that seeks to employ the petitioner. Therefore, the appeal has not been properly filed, and must be rejected.

We note that, even if the appeal had been properly filed, it would then have been summarily dismissed. 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, "[a]n 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." In this proceeding, the employer does not allege any Service error in the rendering of the decision. Instead, the employer acknowledges that the petition was filed with insufficient documentation, and asserts that additional materials will be forthcoming within 90 days. To date, nearly two years after the April 2001 filing of the appeal, the record contains no further submission.

In sum, while the employer asserts that the petitioner erred in his handling of the present petition, the employer does not demonstrate, or even claim, that the director erred in any way, or that the director's decision was incorrect given the evidence available at the time of adjudication. Thus, absent any allegation of Service error (and given the absence of any promised supplementary submission), this appeal would have been summarily dismissed if it were not rejected.

ORDER: The appeal is rejected.