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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: WAC 00 070 51489 Office: CALIFORNIA SERVICE CENTER Date: JAN 29 2002

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

PUBLIC COPY

IN BEHALF OF PETITIONER:

[redacted]

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

Helen E Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. The subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be rejected, the previous decisions of the director and the Associate Commissioner will be affirmed, and the petition will be denied.

The petitioner appeared on the appeal through counsel, who filed a Notice of Entry of Appearance as Attorney or Representative (G-28). 8 CFR 292.4(a). That appeal was based on the beneficiary's qualifications for the position offered and was properly filed.

On the other hand, the instant motion involves entirely different counsel, and the petitioner did not execute this G-28, only the beneficiary. The beneficiary has no standing to initiate either the appearance of counsel or the instant motion.

8 C.F.R. 103.3(a)(1)(iii) refers explicitly to motions in terms of 8 C.F.R. 103.5 and states:

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

Since only an affected party may maintain an appeal or motion, the beneficiary's must be rejected.

8 C.F.R. 103.3(a)(2)(v) further 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.

Counsel cannot represent the beneficiary because the beneficiary has no standing as a party to file the motion or execute the G-28 for an appearance.

8 C.F.R. 103.3(a)(2)(v)(A) explicitly provides,

> *(2) Appeal by attorney or representative without proper Form G-28—(i) General.* If an appeal is filed by an attorney or representative without a properly executed

> Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

The instant motion has not been filed by the petitioner or by any entity with legal standing. Therefore, the instant motion must be rejected.

ORDER: The motion to reopen is rejected, and the previous decisions of the director and the Associate Commissioner are affirmed. The petition is denied.