PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Justice

Immigration and Naturalization Service

B6

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

[redacted]

File: SRC 98 073 52290 Office: TEXAS SERVICE CENTER Date: JAN 3 1 2003

IN RE: Petitioner: [redacted]
Beneficiary

Petition: Immigrant petition for Other Worker Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER: Self-represented

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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Ellen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The petitioner is a retail facility. Although the petitioner did not further specify the nature of its business, it is apparently a gas-and-go, based on the name of the petitioner, and may have a convenience store attached. The petitioner seeks classification of the beneficiary pursuant to section 203(b) of the Immigration and Nationality Act and seeks to employ the beneficiary permanently in the United States as a station manager. The director denied the petition because, contrary to the requirement of Section 203(b)(3)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i), the petition was not accompanied by a labor certification approved by the Department of Labor.

8 C.F.R. 103.1(f)(3)(iii) states, in pertinent part:

In addition, the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on;

* * *

(B) Petitions for immigrant visa classification based on employment or as a special immigrant or entrepreneur under §§ 204.5 and 204.6 of this chapter except when the denial is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act.

Further, 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. It does not include the beneficiary of a visa petition.

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 was not filed by the petitioner, nor by any entity with legal standing in this proceeding, but by the beneficiary. Therefore, the appeal has not been properly filed, and must be rejected. Further, even if that flaw were corrected, as per 8

C.F.R. 103.1(f)(3)(iii), no appeal is available from denials of petitions based on the failure of the petitioner to submit a labor certification.

ORDER: The appeal is rejected.