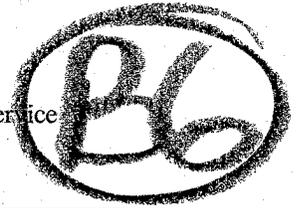




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U.S. Department of Justice

Immigration and Naturalization Service



**Identifying data deleted to
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invasion of personal privacy**

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



File: SRC 01 167 52116

Office: Texas Service Center

Date: JAN 31 2003

IN RE: Petitioner:
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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a farm. It seeks to employ the beneficiary permanently in the United States as a tobacco harvester. 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 is not accompanied by a Labor Certification approved by the Department of Labor. The petition was denied because it was signed by the beneficiary, rather than the petitioner.

On appeal, another copy of the petition was submitted.

An alien may not self-petition under this visa classification. As is stated at 8 C.F.R. 204.5(c), "Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section . . . 203(b) of the Act."

The director also noted that the petition must be accompanied by a Labor Certification, Form ETA-750, that has been endorsed by a Department of Labor representative and must also be accompanied by evidence of the employer's ability to pay the proffered wage.

The appeal in this matter states, "Our understanding was that the beneficiary was to sign (the petition). We stand corrected and are sending a corrected (petition) with proper signature."

That appeal was accompanied by a new Form I-140 petition. The new petition, however, was again signed by the beneficiary, rather than the petitioner. That petition was not accompanied by the requisite Labor Certification, or by evidence of the employer's ability to pay the proffered wage.

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.

The director correctly denied the petition as incorrectly filed. On appeal, the petitioner has failed to overcome that defect. Even had that defect been overcome, the petition would remain deniable based on the absence of a Labor Certification. As there is no appeal available from a decision based on a lack of labor certification, this appeal must be rejected.

ORDER: The appeal is rejected.

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