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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: WAC 02 083 52585 Office: CALIFORNIA SERVICE CENTER Date: MAR 26 2003

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)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

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.

Ellen E Crawford for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner, a restaurant, filed an Immigrant Petition for Alien Worker (I-140) to employ the beneficiary as a cook. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

In the sole Notice of Entry of Appearance as Attorney or Representative (G-28), dated January 3, 2002, only the beneficiary executes the G-28 to recognize the appearance of an attorney (supposed counsel). The petitioner did not sign the G-28. 8 C.F.R. § 292.4(a). Only the petitioner, therefore, is entitled to notice. 8 C.F.R. § 292.5(a). Notice is extended to supposed counsel as a courtesy.

On March 27, 2002, the director determined that the beneficiary did not meet the minimum requirements set forth in the Form ETA 750 and denied the I-140 (the decision).

The petitioner did not appeal. Supposed counsel for the beneficiary executed the notice of appeal (Form I-290B) and submitted a brief.

Form I-290B bears a likeness of the claimed attorney's signature. The brief names an "employer/beneficiary" and an "alien/beneficiary." Neither disguises the fact that the petitioner did not authorize supposed counsel's appearance. Such an appeal must be rejected.

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 putative appeal must be rejected because the beneficiary, himself, had no standing to appear.

8 C.F.R. § 103.3(a)(1)(iii) 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.

No one other than the beneficiary executed a G-28 or appeared on appeal. 8 C.F.R. § 103.3(a)(2)(v) specifies the rejection of the appeal:

> *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.

Supposed counsel urges the motion to reopen in place of an untimely appeal. *See* 8 C.F.R. 103.3(a)(2)(v)(B) *(1) and (2)*. No affected party or authorized attorney, however, has properly filed any appeal with the AAO under any provision. Hence, the motion must be rejected because there is no appeal to treat as a motion to reopen.

ORDER: The appeal is rejected.