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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 24 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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

IN BEHALF OF PETITIONER: SELF-REPRESENTED

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.

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

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant 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 beneficiary, who is employed by Oil Patch Sandblast & Paint, Ltd., filed the present petition on his own behalf. The beneficiary seeks classification as an other worker pursuant to section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(iii). The director denied the immigrant visa petition because the beneficiary signed the petition instead of the United States employer.

An alien may not self-petition under this visa classification. As stated at 8 CFR 204.5(c), "[a]ny United States employer desiring and intending to employ an alien may file a petition for classification under section . . . 203(b)(3) of the Act."

Furthermore, 8 CFR 103.1(f)(3)(iii) states in pertinent part:

> In addition, the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on;
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> * * *
>
> (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 . . . .

As there is no appeal available when a decision is based on a lack of labor certification, this appeal must be rejected.

ORDER: The appeal is rejected.