D8

U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: EAC-98-270-52054 Office: Vermont Service Center Date: MAR 7 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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, Acting Director
Administrative Appeals Unit

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner on appeal. The appeal will be rejected.

The petitioner is a mortgage company. The beneficiary is a professional race car driver. The petitioner seeks classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in athletics and also seeks change of nonimmigrant status. The petitioner seeks to employ the beneficiary in the United States as a promotional director for an unspecified period.

The center director denied the petition finding that the petitioner failed to establish that the beneficiary met the regulatory criteria as an alien with extraordinary ability in athletics.

Counsel for the beneficiary filed an appeal from the decision stating, in part, that a brief would be submitted within sixty days. As of this date, no brief has been received and the record will be considered complete as presently constituted.

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 filed by Michael McKenzie, attorney at law. Counsel submitted a form G-28, Notice of Entry as Attorney, signed by the beneficiary. There is no indication that counsel is authorized to represent the petitioner, [redacted]. Accordingly, counsel has no standing in this proceeding. An appeal from the denial or revocation of a visa petition may be filed only by the petitioner. Matter of Sano, 19 I&N Dec. 299 (BIA 1985). Therefore, the appeal must be rejected pursuant to 8 C.F.R. 103.3(a)(2)(v).

It is further noted that the form I-129, Petition for Nonimmigrant Worker, was signed by Mr. McKenzie. The petition was not signed by

an authorized representative of [redacted]. A beneficiary, or a beneficiary's representative, may not file the petition for O-1 classification. 8 C.F.R. 214.2(o)(2)(i). Therefore, the petition was improperly filed.

It is further noted that, even if the petition and the appeal had been properly filed, there is no response to the grounds for denial. Therefore, the appeal would be summarily dismissed pursuant to 8 C.F.R. 103.3(a)(1)(v).

ORDER: The appeal is rejected.