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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 00 068 50176 Office: CALIFORNIA SERVICE CENTER Date: APR 21 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

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 filed the Immigrant Petition for Alien Worker (I-140) for the beneficiary. The petitioner is a non-profit Armenian cultural and educational facility, comedy club, and entertainment and recording studio and seeks to employ the beneficiary as a teacher of Armenian music. 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.

Counsel of record (counsel) represented the petitioner in proceedings for the Form ETA 750 and the I-140. Counsel appeared throughout pursuant to a Notice of Entry of Appearance as Attorney or Representative (G-28) dated August 12, 1997. The proceedings, as presently constituted, contain no other G-28.

An attorney other than counsel of record filed an appeal on June 14, 2002, but the record, as presently constituted, contains no G-28 with the petitioner's signature to authorize the attorney's appearance. Indeed, the attorney left blank, on the very notice of appeal, the party whom he represented, where a space requires this name. Citizenship and Immigration Services (CIS) may not recognize the attorney's representation without evidence of authorization. *See* 8 C.F.R. § 292.4(a). Only the petitioner and counsel of record will be notified of this decision. *See* 8 C.F.R. § 292.5(a).

Provisions for appeal in 8 C.F.R. § 103.3(a)(2)(v)(A) explicitly state:

> *(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 [CIS] has accepted will not be refunded regardless of the action taken.

An appeal by a person or entity not entitled to file is improperly filed and must be rejected. *See* C.F.R. § 103.3(a)(2)(v)(A)*(1)*.

ORDER: The appeal is rejected.