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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 21 2004

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)

ON BEHALF OF PETITIONER:

[redacted]

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.

Helen 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 is a motorcycle parts manufacturer. It seeks to employ the beneficiary permanently in the United States as a metal polisher. 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.

The petitioner filed an I-140 petition on June 29, 2001. A Request for Evidence was issued on November 6, 2001. Counsel responded to that RFE with evidence and a cover letter dated January 21, 2002. The director issued a decision dated February 28, 2002 denying the I-140 petition. No appeal was taken from that decision.

On December 12, 2002 the petitioner filed a new I-140 petition, along with an I-485 application to adjust status to permanent residence. Counsel included a letter stating that the petitioner had no record of receiving the director's decision on the previous I-140 petition.

With the second I-140 petition counsel initially submitted insufficient evidence of the petitioner's ability to pay the proffered wage and of the beneficiary's experience. In a request for evidence (RFE) dated December 20, 2002, the director required additional evidence to establish the petitioner's ability to pay the proffered wage and to establish the beneficiary's experience.

Counsel responded to that RFE with evidence and a cover letter dated March 24, 2003.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition in a decision dated June 17, 2003.

On July 15, 2003 the beneficiary executed a Notice of Appeal, Form I-290B. The address of the person filing the appeal was that of the petitioner's counsel and the notice states that the person filing the appeal represents [redacted] Nonetheless, the signature on the I-290B is that of the beneficiary, [redacted]

Only an authorized party may maintain an appeal. 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.

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.

The beneficiary improperly filed an appeal, and was not a person or entity with legal standing to do so. Therefore, the appeal has not been properly filed and must be rejected.

ORDER: The appeal is rejected.