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

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: WAC 02 193 51009 Office: CALIFORNIA SERVICE CENTER Date: MAR 30 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.

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

DISCUSSION: The preference 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 summarily dismissed.

The petitioner is a Mexican restaurant firm. It seeks to employ the beneficiary permanently in the United States as a foreign food specialty 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.

Provisions of 8 C.F.R. § 204.5(g)(2) state:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. 8 C.F.R. § 204.5(d). The petition's priority date in this instance is January 19, 1999. The beneficiary's salary as stated on the labor certification is $11.62 per hour or $24,169.60 per year. Citizenship and Immigration Services (CIS), formerly the Service or INS, received the Immigrant Petition for Alien Worker (Form I-140) in this record on May 23, 2002.

Counsel initially submitted insufficient evidence of the petitioner's ability to pay the proffered wage. In a request for evidence (RFE) dated August 15, 2002, the director required quarterly wage reports for the last four quarters (Form DE-6). They did not establish that the petitioner had employed the beneficiary. The petitioner's 1999-2001 Forms 1040, U.S. Individual Income Tax Returns, reported adjusted gross income (AGI) of $18,111, $21,834, and $15,700. The federal tax returns for the petitioner's household claimed six (6) exemptions in 1999 and 2000 and five (5) in 2001.

The director determined that the AGI could not support the petitioner's household after the subtraction of the proffered wage, concluded that the evidence did not establish that the petitioner had the ability to pay the proffered wage at the priority date, and continuing until the beneficiary obtains lawful permanent residence, and denied the petition.

Counsel's appeal states:

> This appeal is submitted with a new non-certified ETA 750 A&B, new I-140 application along with documentary evidence of the substituting petitioning employer's ability to pay the proffered wage. It is hopeful that [CIS] accepts the substituting employer's offer of employment and approves the [I-140].

The proceedings, in fact, contain no "non-certified" Form ETA 750 or new I-140. Counsel, to the contrary, stipulates, elsewhere on the appeal, "I am *not* submitting a separate brief or evidence." Counsel, notwithstanding,

submits Forms 1065, U.S. Partnership Returns of Income, but they do not relate to the petitioner's Form ETA 750 or I-140. The Forms 1065 reference Taqueria El Atacor #2 (Taqueria). They are not material to the proponent of the appeal, El Atacor Mexican Restaurant #4 [Atacor]. They are all strangers as to the petitioner.

Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel has no authority to appear for Atacor or Taqueria. The petitioner executed the only Notice of Entry of Appearance as Attorney or Representative (Form G-28), dated March 11, 2002, but the petitioner has no part of this appeal. The strangers can give no G-28. Counsel is not appearing under an authorized G-28. *See* 8 C.F.R. § 292.4, 8 C.F.R. § 103.2(a)(3), and 8 C.F.R. § 103.3(a)(1)(v).

Moreover, records of CIS reflect that the director issued a denial of one stranger's petition for the beneficiary on October 2, 2003. No appeal from that decision is before CIS.

Counsel has filed no further brief or evidence with the director or the AAO, and more than the time allowed and requested has elapsed. 8 C.F.R. §§ 103.3(a)(2)(i) and (viii). Counsel has no authority to appear and does not identify, specifically, any erroneous conclusion of law or statement of fact. Hence, the appeal must be summarily dismissed. 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is summarily dismissed.