PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 02 076 55565 Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

[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 director of the service center denied the nonimmigrant visa petition filed for the beneficiary. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A).

This proceeding involves a change-of-employment petition. The petitioner is a corporation engaged in computer software productions that seeks to temporarily employ the beneficiary as a technical support specialist. The petition is filed subsequent to the beneficiary's leaving a technical support specialist position with a previous petitioner for whom the beneficiary previously had been classified to work as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the petitioner had failed to comply with the requirement, stated at 8 C.F.R. § 214.2(h)(4)(i)(B)(1), that, prior to filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that the petitioner had filed a labor condition application (LCA) with the Department. The director found that the certified LCA postdated the filing of the present petition.

The appeal is rejected because the record does not establish that the petitioner authorized the appeal to be filed on its behalf.

The Form I-290B (Notice of Appeal) is signed only by an attorney and the beneficiary. Likewise, the Form G-28 (Notice of Entry of Appearance as Attorney or Representative) submitted with the Form I-290B is signed only by the attorney and the beneficiary. The record contains a Form G-28 that indicates the petitioner's earlier appointment of the same attorney as its representative. However, the petitioner signed that form on December 18, 2001, a date which is not contemporaneous with the director's June 8, 2002 decision denying the petition or with the July 10, 2002 filing of the appeal. In contrast, the Form G-28 that was filed with the appeal bears the same date as the letter that the attorney submitted with the appeal, July 1, 2002.

As demonstrated above, the record establishes only that the beneficiary has authorized counsel to submit the appeal. Accordingly, the AAO will consider the appeal as submitted by an attorney acting on behalf of the beneficiary alone.

Citizenship and Immigration Services regulations state that a beneficiary of a visa petition has no legal standing in an appeal, and specifically prohibit a beneficiary, or a representative acting on a beneficiary's behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

ORDER: The appeal is rejected as improperly filed.