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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

D8

FILE: SRC 03 158 52589 Office: TEXAS SERVICE CENTER Date: DEC 06 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

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.

Marc Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

CC [redacted]

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

A Form I-129 petition was filed on May 14, 2003, in the name of Vanderbilt University, seeking an extension of O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in medical science, in order to continue to employ him in the United States for one more year.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is at the very top of his field of endeavor.

A Form G-28, Notice of Entry of Appearance, was filed with the instant petition. Dr. [redacted] Director, Epilepsy Division, signed the Form G-28 on behalf of the petitioner. [redacted] signed the Form G-28 as the attorney of record for the petitioner and the beneficiary.

On appeal, a new Form G-28 was submitted with the Form I-290B, Notice of Appeal. The G-28 was signed by the beneficiary and another attorney, Mario Ramos.

According to the regulation at 8 C.F.R. § 292.4(a), in order for the appearance to be recognized by Citizenship and Immigration Services (CIS), the appearance as attorney or representative in a visa petition proceeding must be filed on the appropriate form and must be signed by the applicant or the petitioner in the proceeding authorizing representation. The appropriate form is the G-28. The appeal in this matter was filed with the Form G-28 signed by the beneficiary and his new attorney of record.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) provides, in pertinent part, that:

> *[A]ffected party* . . . 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)(1)(v) states, in pertinent part:

> *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. Only the affected party or attorney of record may file an appeal.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding; but rather, by an attorney who is representing the beneficiary. Therefore, the appeal has not been properly filed and must be rejected.

ORDER: The appeal is rejected.