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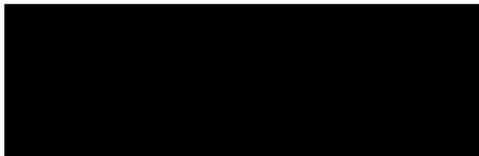
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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Date: **JUL 27 2012** Office: VERMONT SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker 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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the instant nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly filed.

In a letter submitted in support of the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "Nursing Home." To employ the beneficiary in what it designates as an "Assistant Director of Nursing / Resident Care Coordinator" position, the petitioner endeavors to classify her 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 on May 27, 2010, concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

Alleged counsel for the petitioner subsequently filed a timely appeal on June 18, 2010.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) states, in part, the following:

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.

Furthermore, in accordance with the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Form I-290B, a "new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office." This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010).

In the present matter, counsel claimed to file an appeal on behalf of the petitioner and submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative. However, the Form G-28 was not "new" in that (1) the petitioner and counsel signed the Form G-28 prior to the filing of the Form I-129, and (2) the Form G-28 indicates that counsel's appearance is in regard to the Form I-129, not the appeal. Thus, as the submitted Form G-28 did not meet the requirements of the regulation at 8 C.F.R. § 292.4(a) or the instructions to the Form I-290B, the petitioner failed to establish that it is represented by an attorney or accredited representative.

In accordance with 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii), the AAO sent counsel a facsimile on June 27, 2010, notifying him that a properly executed Form G-28, signed by counsel and the consenting affected party, must be submitted to the AAO within fifteen calendar days. However, counsel failed to respond to this request. The AAO therefore concludes that the appeal was improperly filed and must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1), which calls for rejection of an improperly filed appeal, where the person filing it is not entitled to do so.

ORDER: The appeal is rejected.