

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**



DZ

Date: OCT 10 2012

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:
Beneficiary: [REDACTED]

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition, and the AAO dismissed a subsequent appeal. The matter is now before the Administrative Appeals Office (AAO) on a combined motion to reopen and motion to reconsider. The motion will be dismissed.

On the Form I-129 visa petition the petitioner stated that it is a rehabilitation house for troubled youth. To continue to employ the beneficiary in what it designates as a child and family social worker 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position.

U.S. Citizenship and Immigration Services (USCIS) regulations only entitle the "person or entity with legal standing" as an "affected party" to file a motion. *See* 8 C.F.R. §§ 103.3(a)(1)(iii)(B) and 103.5(a)(1). In addition, the regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements shall be dismissed.

Furthermore, in accordance with the 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/motion filed with the AAO. *See* 103.2(a)(1) (incorporating the Form I-290B's instructions into the regulations). Title 8 C.F.R. § 292.4(a) also provides the AAO with the right to require "[f]urther proof of authority to act in a representative capacity." This regulation applies to all Forms I-290B filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010).

In the present matter, counsel claimed to file a motion on behalf of the petitioner. That motion, however, was not accompanied by a new Form G-28, Notice of Entry of Appearance as Attorney or Representative. Although the record contains a previously submitted Form G-28, dated April 28, 2009, that G-28 is not "new" in that (1) it was executed prior to the decision upon which the instant motion was filed, and (2) the Form G-28 indicates that counsel's appearance is in regard to the Form I-129, not the motion.¹ Thus, as the Form G-28 in the record did not meet the requirements of the regulation at 8 C.F.R. § 292.4(a) or the instructions to the Form I-290B, counsel failed to establish that he represents the petitioner as an attorney or accredited representative with regard to the instant motion before the AAO.

In accordance with 8 C.F.R. § 292.4(a), the AAO sent counsel a facsimile on August 20, 2012, requiring him to submit a new, properly executed Form G-28, signed by counsel and the consenting affected party, to the AAO within fifteen calendar days. However, counsel failed to respond to this request. The AAO therefore concludes that the motion was improperly filed and must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4), which calls for the dismissal of a motion that does not meet applicable requirements.

¹ Although the record contains a Form G-28 indicating counsel's appearance on the petitioner's behalf with regard to a Form I-290B, it is not dated, and there is no reference to the instant motion before the AAO. Therefore, as this Form G-28 was not properly completed, it may not be accepted as evidence of counsel's continued representation of the petitioner in this matter.

ORDER: The motion is dismissed.