



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: APR 02 2013

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "retail" company with four employees. It seeks to employ the beneficiary in what it designates as an "accountant" position and 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 on March 30, 2010, finding that the petitioner (1) failed to establish that it would employ the beneficiary in a specialty occupation position, and (2) failed to demonstrate that the beneficiary is qualified to work in a specialty occupation position. The AAO dismissed a subsequent appeal on May 3, 2012.

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, [REDACTED], the petitioner's prior counsel claimed to file the instant 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.¹ Although the record contains previously submitted Forms G-28, dated July 7, 2009 and September 25, 2009, those Forms G-28 are not "new" in that they were executed prior to the decision upon which the instant motion was filed. Thus, as the Forms 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 February 5, 2013, 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

¹ It is noted that the instant motion was submitted with a Form G-28 signed on July 7, 2009, by [REDACTED] President, on behalf of the petitioner, and [REDACTED]

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pursuant to 8 C.F.R. § 103.5(a)(4), which calls for the dismissal of a motion that does not meet applicable requirements.

ORDER: The motion is dismissed.