



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

B3



FILE: [REDACTED]
LIN 06 213 52277

Office: NEBRASKA SERVICE CENTER

Date: JUN 06 2008

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a semiconductor manufacturer.¹ It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a senior software engineer. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding researcher.

The Form I-290B Notice of Appeal and, in fact, the initial Form I-140 petition were both improperly filed. Attorneys at the firm Littler Mendelson, P.C. signed both forms, allegedly on behalf of the petitioner. The record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative. An attorney, however, also signed this form on behalf of the petitioner. Finally, one of the required pieces of initial evidence for the classification sought, a permanent job offer, is also signed by an attorney purportedly on behalf of the petitioner. Thus, none of the required forms or job offer that relate to this individual beneficiary are signed by an official of the petitioner. We acknowledge that the record contains a letter dated November 24, 2003, with the heading "Authorization to Sign Documents" signed by [REDACTED], the petitioner's North American Immigration Operations Manager. The letter purports to "authorize the attorneys of Littler Mendelson, P.C., to sign immigration documents for [the petitioner] on behalf of Intel."² However, as will be discussed, this form does not meet the signature requirements of any of the controlling Citizenship and Immigration Services (CIS) regulations.

First, the appeal must be rejected because it was improperly filed. The regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

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. In such a case, any filing fee the Service has accepted will not be refunded.

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

¹ The petitioner will be considered self-represented because, as will be made clear in the body of this decision, the record lacks a properly executed Form G-28 Notice of Entry of Appearance as Attorney or Representative. 8 C.F.R. § 103.2(a)(3).

² The petitioner also submitted a nearly identical letter dated July 17, 2006 with the Form I-140 submission; however, since the Form I-140 and all of the supporting documents were filed on July 13, 2006, the validity of this post-dated letter is unclear.

(B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

An attorney for a petitioner may properly file an appeal on behalf of a petitioning entity in certain circumstances. However, the July 5, 2006 Form G-28 in this case does not establish that the attorney who filed the appeal represents the petitioner. The regulation at 8 C.F.R. § 292.4(a) provides:

An appearance shall be filed on the appropriate form by the attorney or representative appearing in each case. During Immigration Judge or Board proceedings, withdrawal and/or substitution of counsel is permitted only in accordance with Sec. 3.16 and 3.36 respectively. During proceedings before the Service, substitution may be permitted upon the written withdrawal of the attorney or representative of record, or upon notification of the new attorney or representative. When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature shall constitute a representation that under the provisions of this chapter he or she is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required. *A notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service.*

(Emphasis added.) The regulation at 8 C.F.R. § 103.2(a)(3) provides that where a notice of representation is “not properly signed, the application or petition will be processed as if the notice had not been submitted.” The commentary to the publication of this final regulation provides: “An applicant or petitioner must sign the Form G-28 to definitively indicate to the Service that he or she has authorized the person to represent him or her in the proceeding.” 59 Fed. Reg. 1455 (Jan. 11, 1994).

The Form G-28 was not signed by an employee of the petitioning entity. Instead, it appears to have been signed on behalf of the petitioning entity by a member of the law firm that submitted the Form I-140 and the appeal, apparently on the basis of a three-year old “Authorization to Sign Documents.” However, the “Authorization to Sign Documents” is not a properly executed Form G-28, and does not meet the requirements of the regulation at 8 C.F.R. § 292.4(a). The only properly executed Form G-28 in the record is one signed by the beneficiary. Thus, we can only recognize the attorney who filed the appeal as representing the beneficiary.

We acknowledge that the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) provides the following with respect to appeals by attorneys without a proper Form G-28:

(i) *General.* 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. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

(ii) *When favorable action warranted.* If the reviewing official decides favorable action is warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of the request. If Form G-28 is not submitted within the time allowed, the official may, on his or her own motion, under Sec. 103.5(a)(5)(i) of this part, make a new decision favorable to the affected party without notifying the attorney or representative.

(iii) *When favorable action not warranted.* If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the AAU. The official shall also forward the appeal and the relating record of proceeding to the AAU. The appeal may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.

Requesting a proper Form G-28 signed by the petitioner in this matter, however, would serve no purpose as the underlying petition was not properly filed. The Form I-140 petition identifies Intel Corporation as the employer and the petitioner. As quoted below, the regulation at 8 C.F.R. § 103.2(a)(2) requires that the petitioner sign the petition.

In this instance, no employee or officer of Intel Corporation signed Form I-140. The only signatures on that form are that of an attorney who allegedly represents the petitioner as counsel. The attorney signed Part 8 of the Form I-140, "Petitioner's Signature" on behalf of Intel Corporation, thereby seeking to file the petition on behalf of the actual United States employer. However, as will be demonstrated by a review of the relevant regulations and their history, the regulations do not permit an individual who is not the petitioner to sign Form I-140 on behalf of a United States employer.

The regulation at 8 C.F.R. § 204.5(c) provides:

Filing petition. Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The regulation at 8 C.F.R. § 204.5(a)(1) provides that a petition is properly filed if it is accepted for processing under the provisions of 8 C.F.R. § 103. The regulation at 8 C.F.R. § 103.2(a)(2) provides:

Signature. An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the BCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

An earlier version of the regulation at 8 C.F.R. § 204.1(d), as in effect in 1991, provided, in pertinent part:

Before the petition may be accepted and considered properly filed, the petitioner *or authorized representative* shall sign the visa petition (under penalty of perjury) in the block provided on the form.

(Emphasis added.) 8 C.F.R. § 204.1(d) no longer includes language that would allow an authorized representative to sign a petition, although we acknowledge that this provision now relates only to immediate relative and family based petitions. In contrast, the filing requirements for employment-based immigrant petitions are now found at 8 C.F.R. § 204.5(a). The regulation at 8 C.F.R. § 204.5(a)(1) provides that such petitions must be accepted for processing under the provisions of 8 C.F.R. § 103. As stated above, the regulation at 8 C.F.R. § 103.2(a)(2) provides that the petitioner must sign the petition and does not include the “or authorized representative” language that previously applied to Forms I-140 up through 1991. Had legacy Immigration and Naturalization Service (INS), now CIS, intended to continue to allow authorized representatives to sign Form I-140 petitions, the language expressly allowing them to do so would not have been removed.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The petition has not been properly filed because the petitioning U.S. employer, Intel Corporation, did not sign the petition. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition.

CIS and legacy INS have required that an authorized employee of the U.S. petitioning employer must sign the Form I-140 petition on behalf of the petitioning employer since at least 1991 when INS removed the “or authorized representative” language. This requirement reflects a genuine Form I-140 program concern regarding the validity of the permanent job offers contained in Form I-140 petitions. To this end, the employer’s signature serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

As stated above, an attorney signed the Form I-140 petition both on behalf of the petitioner and as the preparer. The signature line on the Form I-140 for the petitioner provides that the petitioner is certifying, “under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct.” A separate line exists for the signature of the preparer declaring that the form is “based on all information of which [the preparer has] knowledge.” Thus, the form itself acknowledges that a preparer who is not the petitioner can only declare that the information provided is all the information of which she has knowledge. Significantly, according to the Form I-140, only the petitioner can certify the truth of the information under penalty of perjury. Moreover, we note that the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney’s unsupported assertions on the petition and the job offer have no evidentiary value.

Allowing an attorney to sign all petitions, notices of appearance (for the same attorney), appeals, and all employment offers on behalf of the petitioner based on a broad assignment of authorization for all immigration matters relating to any alien would not protect the integrity of the immigration process. While we do not allege any malfeasance in this matter, we note prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms for which the alien or employer had no knowledge. *United States v. O’Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

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 represents the beneficiary. Therefore, the appeal has not been properly filed, and must be rejected. Moreover, the underlying petition also was not properly filed. Thus, further action on the petition cannot be pursued.

ORDER: The appeal is rejected.