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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

[redacted]

B3

Date: MAY 30 2012 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: 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:

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The director granted a subsequent motion to reopen/reconsider, withdrew its previous decision, and issued a new decision denying the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The appeal will be rejected.

The petitioner is a non-profit hospital.[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 research scientist in the field of hematology/oncology. On May 27, 2011, the director denied the petition, finding that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding professor or researcher. On July 26, 2011, the director granted a subsequent motion to reopen/reconsider, withdrew her previous decision, and issued a new decision denying the employment-based immigrant visa petition finding that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding professor or researcher.

As will be explained below, the appeal will be rejected because it was not signed by the petitioner or the attorney of record as established by a properly filed Form G-28, Notice of Entry of Appearance as Attorney or Representative. Moreover, the underlying petition also was not properly filed.

I. Signatures on the Form I-290B and Form G-28

The regulation at 8 C.F.R. § 103.3(a)(2) provides, in pertinent part:

> (v) *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.
>
> (2) *Appeal by attorney or representative without proper Form G–28—*
>
> (i) *General.* If an appeal is filed by an attorney or representative without a properly

[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).

> 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. . . .*
>
> (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 [AAO]. The official shall also forward the appeal and the relating record of proceeding to the [AAO]. 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.

The regulation at 8 C.F.R. § 103.2(a)(1) provides:

> *General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.

The instructions for the Form I-290B, Notice of Appeal or Motion, advise the appellant that:

> If you wish, you may be represented at no expense to the U.S. Government by an attorney or other duly authorized representative. Your attorney or representative must submit a Form G-28 with the appeal or motion. If the appeal or motion is filed without a properly executed Form G-28, it will be dismissed or rejected.

Additionally, the regulation at 8 C.F.R. § 292.4(a) and the instructions to the Form G-28 provide that:

> An appearance must be filed on the appropriate form as prescribed by DHS [Department of Homeland Security] by the attorney or accredited representative appearing in each case. The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the

> appearance to be recognized by DHS. The appearance will be recognized by the specific immigration component of DHS in which it was filed until the conclusion of the matter for which it was entered. *This does not change the requirement that a new form must be filed with an appeal filed with the Administrative Appeals Office of USCIS.* [emphasis added] [2]

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

> (B) *Meaning of affected party.* For purposes of this section and §§ 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.

Only an affected party, a person or entity with legal standing, may file an appeal of an unfavorable decision. The Form I-290B is signed by attorney However, did not submit a new Form G-28 with the appeal authorizing him to act on behalf of the petitioner. In addition, a previously submitted Form G-28 was signed on behalf of the petitioner by the beneficiary. Further, the only properly executed Form G-28 in the record, filed with a Form I-485 application to adjust status to permanent resident, is one signed by the beneficiary. Thus, we can only recognize the attorney who filed the appeal as representing the beneficiary.

By fax on May 3, 2012, the AAO requested to submit a new and duly executed Form G-28, including the signature of an authorized official of the petitioning entity, in accordance with the instructions for Form I-290B and Form G-28, and the regulation at 8 C.F.R. § 292.4(a). The request was transmitted to the fax number listed for on the Form I-290B and on the previously submitted Form G-28, and advised to submit the properly executed Form G-28 to the AAO within 10 calendar days. failed to respond to the AAO's request.

As has failed to provide a properly executed Form G-28 authorizing him to act on behalf of the petitioner in the appellate stage of this proceeding, he cannot be considered as the petitioner's legal representative. Accordingly, the appeal has not been filed by the petitioner or by any entity with legal standing in the proceeding.

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[2] Not only does the petitioner's signature on the Form G-28 authorize representation by an attorney or accredited representative in matters before USCIS, it serves as consent to disclosure of information covered under the Privacy Act of 1974. The Immigration and Naturalization Service (legacy INS) first implemented the requirement that a petitioner or applicant sign the Form G-28 in the final rule "Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits" 59 Fed. Reg. 1455 (Jan. 11, 1994). In response to several commenters who suggested that the attorney need be the only signatory on the Form G-28, the agency explained that other commenters had properly noted that capture of the petitioner's signature on the Form G-28 "would address potential Privacy Act concerns." The agency emphasized that the "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). A 2010 revision to the regulation at 8 C.F.R. § 292.4(a) retains the requirement that a petitioner or applicant sign the Form G-28. 75 Fed. Reg. 5225 (Feb. 2, 2010).

II. Signatures on the Form I-140 Visa Petition

The Form I-140 petition identifies as the employer and the petitioner. In this instance, no authorized official of the petitioning entity signed the Form I-140 visa petition. The beneficiary signed Part 8 of the Form 1-140, in the block provided for "Petitioner's Signature," thereby seeking to file the petition on behalf of the actual United States employer. However, the regulations do not permit any 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)(l)(B),* 203(b)(l)(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)(l)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101 (a)(27)(C) of the Act).

(Emphasis added.) The regulation at 8 C.F.R. § 204.5(a)(l) 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.

(Emphasis added.) An earlier version of the regulation at 8 C.F.R. § 204.l(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.) The regulation at 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)(l) 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, now USCIS, 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, ., 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. While the Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS,* 2000 WL 282785 at *3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 534 U.S. 819 (2001).

USCIS 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 1991 when legacy INS removed the "or authorized representative" language. Practically, the signature requirement reflects a genuine 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.

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." To be valid, 28 U.S.C. § 1746 requires that declarations be "subscribed" by the declarant "as true under penalty of perjury." *Id.* In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: "Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury." 18 U.S.C. § 1621. The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration "for" another. Without the petitioner's actual signature as declarant, the declaration is completely robbed of any evidentiary force. *See In re Rivera,* 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates,* No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

The AAO notes that an entirely 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 I-140 itself acknowledges that a preparer who is not the petitioner cannot attest to the

contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. signed the Form I-140 as the preparer of the petition. 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 have no evidentiary value.

The AAO notes that the integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign all petitions, notices of appearance and appeals on behalf of the petitioner would leave the immigration system open to fraudulent filings. 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 of 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).

III. Conclusion

The appeal has not been filed by the petitioner, or by any entity with legal standing in the proceeding, but instead appears to have been signed 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.