

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



*Bla*

FILE: EAC-02-239-51912 Office: VERMONT SERVICE CENTER Date: **MAY 20 2005**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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, Director  
Administrative Appeals Office

cc: RONALD H. FANTA

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner filed the I-140 for the beneficiary on July 5, 2002 and the director denied it on July 25, 2003. An I-290B Notice of Appeal was filed on August 11, 2003 by [REDACTED]. The petitioner's name appears on the line for the name of the "person and/or organization" represented by [REDACTED]. The file also contains an original Form G-28 Notice of Entry of Appearance as Attorney or Representative dated June 22, 2002 stating the appearance by [REDACTED] on behalf of the petitioner.

The Form G-28 claims that [REDACTED] is an attorney. On the G-28, the first block is checked, in which the printed form language states

I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia \_\_\_\_\_ Name of Court \_\_\_\_\_ and am not under a court of administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law.

In the first blank space on the G-28 the words "United States" are entered and in the second blank space the words "Board of Immigration Appeals" are entered. The G-28 is signed by Ronald H. Fanta and is co-signed at the bottom of the form by the petitioner's president.

The regulations contain several provisions relating to the proper filing of appeals as follows.

The regulation at 8 C.F.R. § 103.2(a)(3) states that a petitioner may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter."

The regulation at 8 C.F.R. § 1.1(f) states:

The term *attorney* means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states:

*Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

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 [that CIS] has accepted will not be refunded.

Finally, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) provides in pertinent part:

*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 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 [CIS] has accepted will not be refunded regardless of the action taken.

In the instant case, the information entered in category 1 of the G-28 claiming that [REDACTED] a member of the bar of the Board of Immigration Appeals does not conform to the printed language on the G-28 form, since the Board of Immigration Appeals is not a part of the United States Supreme Court, nor is it a State, territory, insular possession, or the District of Columbia. Nor does the information in category 1 of the G-28 satisfy the definition of attorney in the regulation at 8 C.F.R. § 1.1(f), as required by the regulation at 8 C.F.R. § 292.1 dealing with representation and appearances. In addition, the name [REDACTED] does not appear on the most current list of accredited representatives published on the Internet web site of the Executive Office of Immigration Review and dated February 7, 2005. *See* Board of Immigration Appeals, *Accredited Representatives Roster*, <http://www.usdoj.gov/eoir/statspub/accreditedreproster.pdf> (accessed May 4, 2005).

The notice of appeal and the G-28 submitted previously fail to conform to the regulations cited above because no evidence indicates that [REDACTED] is authorized to act as a representative.

Even though the Vermont Service Center mistakenly accepted [REDACTED] as the attorney of record, the AAO is not bound by the center's decisions. As stated above, [REDACTED] is not authorized to serve as a representative and as such he is not a party to these proceedings. If the petitioner wishes to file a motion pertaining to the instant petition, it may do so.

For the foregoing reasons, the appeal has not been properly filed and must be rejected.

**ORDER:** The appeal is rejected.