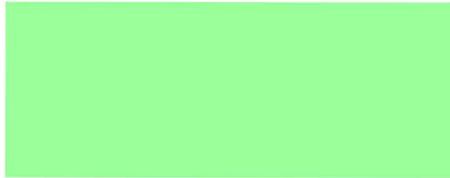


(b)(6)

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

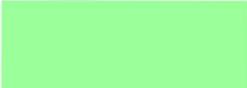


U.S. Citizenship
and Immigration
Services



DATE: **AUG 07 2012**

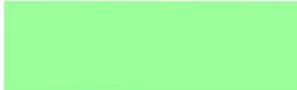
Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant 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:

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. As required by statute, the petition is accompanied by an ETA Form 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not provided all required initial evidence and thus failed to demonstrate its continuing ability to pay the proffered wage or the beneficiary's qualifications for the proffered position. The director denied the petition accordingly.

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:

(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 affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

An attorney for a petitioner may properly file an appeal on behalf of a petitioning entity in certain circumstances. However, in the instant case, Form I-290B was filed by an attorney who did not submit a properly executed Form G-28 signed by the petitioner and the individual who filed Form I-290B.

The regulation at 8 C.F.R. § 292.4(a) (1994) 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 on Form G-28 is “not properly signed, the application or petition will be processed as if the notice had not been submitted.”¹

The record of proceeding contains no Form G-28 associated with the Form I-140 or I-290B in this case. Further, the record of proceeding contains no other properly executed Form G-28. Moreover, not only does the record contain no properly executed Form G-28 but also the only name and signature appearing on Form I-290B is that of the attorney.

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

¹ 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 a 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). The revised regulation states:

An appearance shall be filed on the appropriate form by the attorney or representative appearing in each case. . . . 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].

(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.

In this case, on July 27, 2012, the AAO issued a request, via facsimile, to the attorney whose name appears on Form I-290B, requesting a properly executed Form G-28. The AAO utilized the facsimile number which appeared on the attorney's letter which accompanied Form I-290B. The facsimile number was not operational. The AAO also attempted to call counsel utilizing the phone number which also appeared on the letter which accompanied Form I-290B and another office number acquired through a search of public records. Neither of the phone numbers was operational. The AAO has not been able to reach the attorney and has exhausted all avenues by which to do so.

Because, the Form I-290B, Notice of Appeal or Motion was filed by an individual who is not the affected party and that individual did not submit a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, and the petitioner nowhere signed Form I-290, the Form I-290B must be rejected.

ORDER: The appeal is rejected.