



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: FEB 20 2013

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary: [REDACTED]

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, initially denied the employment-based preference visa petition. After granting the petitioner's motion to reopen and reconsider, however, the director approved the petition. Following an investigation into alleged fraud in connection with the petition, the Acting Director, Texas Service Center, issued the petitioner a Notice of Intent to Revoke (NOIR) the approval of the petition. In a Notice of Revocation (NOR), the acting director ultimately revoked the approval of the Form I-140, Immigrant Petition for Alien Worker. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly filed.

The petitioner is a construction company. According to the petition, it seeks to employ the beneficiary permanently in the United States as an ornamental plasterer. As required by statute, the petition was accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The petition, which was filed electronically on July 16, 2007, sought to substitute the beneficiary for the alien named on the approved labor certification. *See* 20 C.F.R. § 656.11(a) (no longer allowing substitution requests for alien beneficiaries on labor certifications after July 16, 2007).

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what [s]he deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204." The acting director's realization that the petition was approved in error may constitute good and sufficient cause for revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

In her NOR, the acting director determined that the petition was filed without the knowledge or consent of the petitioner and contained falsified evidence. The acting director revoked the approval of the petition accordingly. Based on the fraud finding, the acting director also invalidated the labor certification pursuant to 20 C.F.R. § 656.30(d).

The appeal is timely, but not properly, filed.

All applications and petitions to U.S. Citizenship and Immigration Services (USCIS) must be signed. 8 C.F.R. § 103.2(a)(2). "By signing the benefit request, the applicant or petitioner ... certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct." *Id.* Acceptable signatures on benefit requests are either handwritten or in electronic format for electronically filed benefit requests as applicable form instructions permit. *Id.*

All benefit requests and documents submitted to USCIS must be executed and filed in accordance with applicable form instructions, which are incorporated into the agency's regulations. 8 C.F.R. § 103.2(a)(1). The instructions to Form I-290B, Notice of Appeal or Motion, state that the petitioner "or [its] legal representative must sign and submit the Form I-290B."

In the instant case, the appeal of the revocation of the petition's approval contained an improperly signed Form I-290B, Notice of Appeal or Motion. The form contained the stamped signature of Attorney [REDACTED] of [REDACTED], New York, NY 10007. Contrary to 8 C.F.R. §

103.2(a)(2), the signature was not handwritten. The instructions to Form I-290B do not permit electronic filing of the appeal. So, the signature was also not in an electronic format that the regulation allows.

Pursuant to the regulation at 8 C.F.R. § 103.2(a)(7)(i), an application or petition that is not properly signed shall be rejected as improperly filed. Although the Texas Service Center did not reject this appeal as improperly filed, 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).

This appeal was also submitted without a Form G-28, Entry of Appearance, authorizing counsel to file the appeal for the petitioner. See 8 C.F.R. § 292.4(a) (requiring attorneys to submit Forms G-28 in connection with AAO appeals submitted after March 4, 2010). The appeal is also therefore improperly filed pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i) (appeal filed by an attorney without properly executed Form G-28 considered improperly filed).<sup>1</sup>

Because the appeal was improperly filed, the appeal must be rejected.

**ORDER:** The appeal is rejected as improperly filed.

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<sup>1</sup> The AAO is not required to request a Form G-28 from counsel in this case because the Form I-290B was improperly filed, and therefore the filing did not constitute “an otherwise properly filed appeal.” See 8 C.F.R. § 103.3(a)(2)(v)(A)(iii) (the AAO shall request a Form G-28 from a representative when favorable action is not warranted on “an otherwise properly filed appeal”).