



U.S. Citizenship
and Immigration
Services

(b)(6)

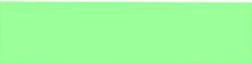


DATE:

FEB 27 2013

OFFICE: NEBRASKA SERVICE CENTER

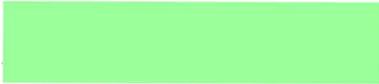
FILE:



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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO), which dismissed the appeal. A motion to reconsider was filed with the AAO. The motion will be rejected as improperly filed.

The petitioner is an advertising media business. It sought to permanently employ the beneficiary in the United States as a marketing director. The petitioner requested classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

The petition was accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, was August 9, 2002. See 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. The petitioner appealed the director's decision.

The AAO dismissed the petitioner's appeal on August 5, 2010, agreeing with the director that the petitioner did not establish that the beneficiary had a foreign degree equivalent to a U.S. bachelor's degree as the approved labor certification required. The AAO also found: (1) that the petitioner failed to establish that it had the continuing ability to pay the offered wage or that a successor-in-interest existed; (2) that the petitioner failed to establish that the beneficiary had the required employment experience for the position; and (3) that the petitioner failed to establish that it remains an active corporation.

Purported counsel for the petitioner timely filed a motion to reconsider the AAO decision. However, the record does not document that the petitioner authorized the filing of this motion.

Attorneys or accredited representatives must file appearances on the appropriate forms in each case for which they represent a party before the U.S. Department of Homeland Security (DHS). See 8 C.F.R. § 292.4(a) and instructions to Form G-28, which are incorporated into the regulations pursuant to 8 C.F.R. § 103.2(a). The forms must be properly completed and signed by the petitioners, applicants, or respondents. *Id.* Otherwise, the appearances will not be recognized in the relevant matters. *Id.*

In the present matter, purported counsel signed the Form I-290B, Notice of Appeal or Motion, and submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative. The Form I-290B was not signed by the petitioner. The Form G-28 also did not contain the original signature of the petitioner's authorized agent and appears to be a photocopy of a previously signed Form G-28. A note was also attached to the form, reading "[a]m not able to update G-28." Thus, the submitted Form G-28 did not meet the requirements of 8 C.F.R. § 292.4(a) and the form's instructions. The Form G-28 therefore failed to establish that counsel represents the petitioner in this matter. The

AAO notes that the record of proceedings does not contain any original Form G-28 from the attorney listed on the Form I-290B.

The AAO sent the attorney a facsimile on December 12, 2012, notifying him that a properly executed Form G-28, signed by himself and the petitioner's authorized agent, must be submitted to the AAO. As of this date, counsel has not responded to the request. *See* 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii) (requiring notice to counsel of defective Form G-28 on appeal).

Because there is no indication that the petitioner authorized the filing of this motion, the AAO concludes that the motion was improperly filed and must be rejected. *See* 8 C.F.R. § 103.3(a)(2)(v)(A)(1) (the AAO must reject an improperly filed appeal).

In the alternative, even if a properly executed Form G-28 had been submitted, the motion submitted does not establish that the AAO's decision was incorrect based on the record at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3). The motion does not cite any precedent decisions, or provide any other basis to warrant reconsideration of the AAO's decision. Further, the motion does not attempt to address or overcome critical issues in the AAO's prior decision, to wit, that the petitioner has not established that a successor-in-interest exists, or that the petitioner or a successor-in-interest had the continuing ability to pay the beneficiary's proffered wage. The evidence provided was previously considered by the AAO, and the motion does not cite to any legal authority to support an argument that the AAO incorrectly applied the law to its decision. Therefore, even if the AAO were to consider the motion, the AAO's prior decision would not be disturbed.

ORDER: The motion is rejected as improperly filed. The AAO's previous decision, dated August 5, 2010, shall not be disturbed.