



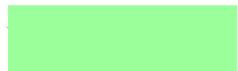
U.S. Citizenship  
and Immigration  
Services

(b)(6)

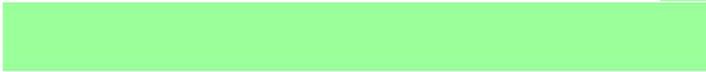


Date: JUN 04 2013 Office: NEBRASKA SERVICE CENTER

FILE:

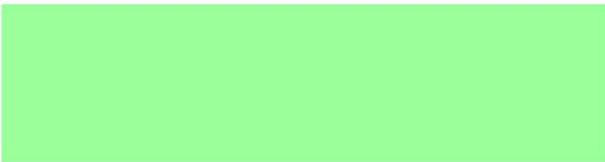


IN RE: Petitioner:  
Beneficiary:



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:



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 preference visa petition was denied by the Director, Nebraska Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reopen/reconsider. The motion will be dismissed.

The petitioner is a stone and marble refinishing business. It seeks to employ the beneficiary permanently in the United States as a concrete stone finisher. As required by statute, the petition is accompanied by a labor certification application approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position in that she does not have two years of qualifying employment experience. The director denied the petition accordingly. The AAO dismissed the appeal because the petitioner had not established that the beneficiary has the qualifying experience to perform the duties of the proffered position.

Following the AAO decision dated March 16, 2010, the petitioner, through counsel, filed a Form I-290B indicating that the petitioner was filing a motion to reopen the decision.

On March 14, 2013, this office notified Mr. [REDACTED] that he signed the Form I-290B as the petitioner's attorney; however, the record does not contain a new and properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by him and the petitioner subsequent to the AA's dismissal of the appeal. Mr. [REDACTED] failed to respond to the AAO request for a new G-28.

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.*

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.*

In accordance with the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Form I-290B, a "new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office." This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010).

Without a new, fully executed Form G-28 authorizing Mr. [REDACTED] to represent the petitioner, the AAO cannot consider the motion to have been properly filed. The AAO notified Mr. [REDACTED] that as required by 8 C.F.R. § 103.3(a)(2)(v)(A)(2) and its subclauses, he must submit a duly executed Form G-28 signed by himself and the petitioner dated subsequent to March 16, 2010 within ten (10) calendar days of the date of the notice; and, that failure to submit this required document will result in the dismissal of the motion.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). More than 10 days have passed and counsel has failed to respond to the AAO's notice. The motion must be dismissed because it was improperly filed without the authority of the petitioner.

ORDER: The motion to reopen is dismissed as improperly filed.