

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

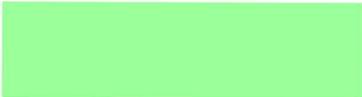


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 25 2013 OFFICE: VERMONT SERVICE CENTER



IN RE: Petitioner: [Redacted]
 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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Vermont Service Center (VSC). On October 1, 2008, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Form I-140, Immigrant Petition for Alien Worker on July 2, 2009. The petitioner appealed the revocation to the Administrative Appeals Office (AAO). The appeal will be rejected as improperly filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(2).

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 he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

The petitioner describes itself as a construction-residential general contractor. It seeks to permanently employ the beneficiary in the United States as a professional carpenter. The petitioner requests classification of the beneficiary as a 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 director’s decision revoking the approval of the petition concludes that the petitioner failed to establish the ability to pay the proffered wage or establish that the beneficiary met the minimum qualifications for the proffered position.

The Form I-290B, Notice of Appeal or Motion, in the instant case was received on August 14, 2009 and signed by [REDACTED]. It was not accompanied by a Form-28 Notice of Entry of Appearance as Attorney or Representative (Form G-28) and the record does not contain any Form G-28 authorizing [REDACTED] to represent the petitioner on appeal or below.¹ On June 11, 2013, the AAO sent a facsimile to [REDACTED] requesting a properly executed Form G-28 for the appeal within seven days. As of the date of this decision, the AAO has not received a response from [REDACTED].

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:

¹ The record contains a brief from the [REDACTED] dated September 10, 2009 and a Form G-28, signed on August 21, 2009. The Form G-28 is signed by [REDACTED] the owner of the petitioning entity, however, the Form G-28 is completed to authorize representation on behalf of [REDACTED], a separate entity from the petitioner. There is no evidence in the record that the petitioner consented to the filing of the appeal.

(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, the Form G-28 dated August 21, 2009 in this case does not establish that the attorney who filed the appeal represents the petitioner for the following two reasons: (1) it was not signed by the petitioner, and (2) it does not appear to have been signed by the attorney whose signature appears on the Form I-290B, Notice of Appeal or Motion.

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.”²

² Not only does the petitioner’s signature on the Form G-28 authorize representation by an attorney or accredited representative in matters before United States Citizenship and Immigration Services (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

Here, while [REDACTED] is a licensed attorney, she has failed to provide an executed Form G-28 authorizing her to represent the petitioner on appeal; therefore, [REDACTED] is not entitled to file an appeal on behalf of the petitioner. Accordingly, as the appeal was improperly filed, it must be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

ORDER: The appeal is rejected.

requirement that a petitioner or applicant sign the Form G-28. 75 Fed. Reg. 5225 (Feb. 2, 1010).
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.)