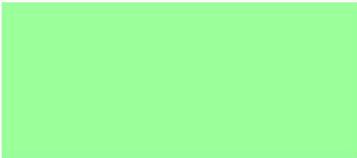


(b)(6)

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



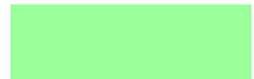
U.S. Citizenship
and Immigration
Services



DATE: OCT 29 2013

OFFICE: TEXAS SERVICE CENTER

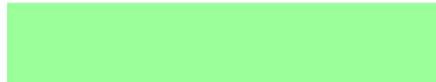
FILE:



IN RE:

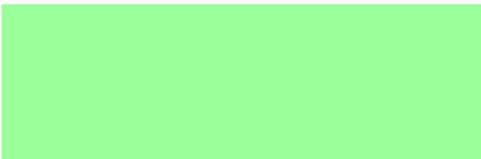
Petitioner:

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition and dismissed a subsequent motion to reopen and reconsider. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be rejected.

The petitioner describes itself as a printing company. It seeks to permanently employ the beneficiary in the United States as a market research analyst. The petitioner requests 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 is accompanied by an ETA Form 9089, Application for Permanent Employment 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, is October 9, 2005. See 8 C.F.R. § 204.5(d).

The director's decision denying the petition concluded that the petitioner had not established that the beneficiary had the minimum experience required to perform the offered position by the priority date.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

A review of the record shows that the petition has not been properly filed, and therefore there is no legitimate basis to continue with this proceeding.

On June 21, 2013, the AAO sent a Request for Evidence and Notice of Derogatory Information (Notice) to the petitioner.² It stated, in part:

The record of proceeding contains signature discrepancies which cast serious doubt on whether you signed the Form I-140 and the Form G-28 submitted with the petition. Therefore, copies of the Form I-140 and Form G-28 are attached. The signatures on these documents do not match your signature on numerous other documents in the record, including the G-28 submitted with the instant appeal and the labor certification.

It appears that an individual other than you signed your name at Part 8 of the Form I-140, in the block provided for "Petitioner's Signature," thereby seeking to file the

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

² The Notice was directed to [REDACTED] the petitioner's owner.

petition on behalf of the actual United States employer. However, the regulations do not permit any individual who is not the petitioner to sign Form I-140 on behalf of a United States employer.

The regulation at 8 C.F.R. § 204.5(c) provides:

Filing petition. Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The regulation at 8 C.F.R. § 204.5(a)(1) provides that a petition is properly filed if it is accepted for processing under the provisions of 8 C.F.R. § 103. The regulation at 8 C.F.R. § 103.2(a)(2) provides:

Signature. An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the BCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer.³ Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition.

³ The signature line on the Form I-140 for the petitioner provides that the petitioner is certifying, “under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct.” To be valid, 28 U.S.C. § 1746 requires that declarations be “subscribed” by the declarant “as true under penalty of perjury.” *Id.* In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: “Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury.” 18 U.S.C. § 1621.

Further, it appears that an individual other than you signed your name on the Form G-28 filed with the petition. The regulation at 8 C.F.R. § 292.4(a) requires that Form G-28 must be signed by the petitioner to authorize representation in order for the appearance to be recognized by USCIS. An attorney cannot satisfy this requirement if a signature from the petitioner's authorized official is forged or altered.

Please provide evidence establishing that you signed the attached Form I-140 and Form G-28.

In response to the Notice, Mr. [REDACTED] submitted an undated statement indicating that he did not sign the Form I-140 and the Form G-28. Specifically, he stated that the "signatures on both forms are not mine. I do not recognize them and this is the first time I ever saw the forms."⁴ The petition has not been properly filed because the petitioning United States employer, [REDACTED] did not sign the petition. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition.

In response to the Notice, counsel states that the petitioner filed another Form I-140 on February 2, 2006 that was approved [REDACTED]. This statement is in error. Form I-140 with receipt number [REDACTED] was denied by the Acting Director of the Nebraska Service Center. Notice of the decision was provided to the petitioner's former counsel on November 15, 2006.

Counsel further states that a motion to reopen and reconsider filed on Form I-290B on October 20, 2009 has not been adjudicated. This statement is in error. That motion was adjudicated.

The petition in the instant case has not been properly filed by a United States employer. Therefore, the AAO must reject the appeal.

ORDER: The appeal is rejected.

⁴ In a letter accompanying the petitioner's response to the Notice, counsel stated "[b]ased on these circumstances it is clear that Petition I-140 SRC07 166 51709 cannot be approved."