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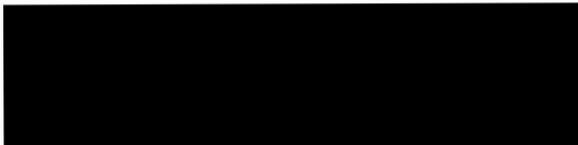


FILE: WAC 04 257 52621 Office: CALIFORNIA SERVICE CENTER Date: NOV 03 2009

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF BENEFICIARY:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed as improperly filed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(A) and (C) and 103.5(a)(4).

The petitioner describes itself as a telecommunications company that seeks to employ the beneficiary as an electrical engineer. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the petitioner failed to establish the proffered position is a specialty occupation or that the beneficiary was qualified to perform the duties of a specialty occupation, and the AAO affirmed the director's findings. On motion, newly retained counsel for the beneficiary submits a brief and additional evidence.

The Form G-28, Entry of Appearance as Attorney or Representative, that was submitted for the record in support of the motion was signed by the beneficiary, not by the petitioner or an authorized representative thereof. U.S. Citizenship and Immigration Services (USCIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). In this case, the Form G-28 that was submitted for the record was signed by the beneficiary in his personal capacity. Moreover, the Form G-28 submitted by counsel clearly limits his representation/appearance to the beneficiary.<sup>1</sup>

In addition, the motion shall be dismissed for failing to meet another applicable filing requirement. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Again, the regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirement listed at 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

Finally, it should be noted for the record that, unless USCIS directs otherwise, the filing of a motion to reopen does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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<sup>1</sup> It is noted that the original G-28 filed with the petition was filed by [REDACTED], who represented both the petitioner and the beneficiary. While [REDACTED] office filed the appeal in this matter, it did not file the motion currently before the AAO. [REDACTED] newly-retained counsel identified on the Form G-28 submitted with this motion, limits his representation to the beneficiary. As a result, [REDACTED] is not an authorized representative of the petitioner.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). As the beneficiary and his counsel are not affected parties or the attorney or representative thereof, counsel is not authorized to file an appeal. *Id.*; 8 C.F.R. § 103.5(a)(1)(iii)(A); 8 C.F.R. § 103.3(a)(1)(iii)(B). In addition, as noted above, the motion failed to contain the requisite statement regarding judicial proceedings concerning the unfavorable decision. Accordingly, the motion will be dismissed; the proceedings will not be reconsidered; and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.