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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529



U.S. Citizenship
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FILE: EAC 07 148 50601 OFFICE: VERMONT SERVICE CENTER DATE: **OCT 29 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 PETITIONER:

SELF-REPRESENTED

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner avers that it supplies software development and programming services, was established in 2006, and currently has four employees. It seeks permission to employ the beneficiary as a software developer and, 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 proffered position is not a specialty occupation. On January 11, 2008, an attorney filed a Form I-290B to appeal the director's adverse decision. Attached to the Form I-290B was a brief and a letter from the petitioner. The attorney did not however, attach a Form G-28, Notice of Entry of Appearance as Attorney or Representative, along with the appeal filing, and there was no Form G-28 already included in the record.

On September 24, 2009, the AAO sent a facsimile to the attorney requesting that he submit a properly executed Form G-28 within seven days. On October 2, 2009, the AAO received a facsimile from the attorney that included a Form G-28. This Form G-28 was not signed by either the attorney or the petitioner.

The regulation at 8 C.F.R. § 292.4(a) governs appearances by attorney or representatives. It states, in pertinent part: "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." Here, the petitioner has not signed the Form G-28 and it is, therefore, not properly executed. An appeal that is filed without a properly executed Form G-28 is considered an improperly filed appeal and it must be rejected. 8 C.F.R § 103.3(a)(2)(v)(A)(2)(i).¹

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the petitioner to establish eligibility for the benefit it is seeking. Here, the petitioner has not met its burden. Accordingly, the AAO rejects the appeal.

ORDER: The appeal is rejected.

¹ The AAO also notes the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii), which provides that an appeal may be considered properly filed as of its original filing date only if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.