



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **DEC 11 2014** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

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)

ATTORNEY FOR THE FORM I-129 PROCEEDING AND ON APPEAL

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

*for Michael T. Kelly*  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The petitioner appealed the denial to the Administrative Appeals Office (AAO), and we dismissed the appeal. The matter is again before us 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); 103.5(a)(1)(iii)(C); and 103.5(a)(4).

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on August 30, 2012. On the Form I-129, the petitioner claims to be engaged in "retail" services, and claims that it was established in [REDACTED]. In order to continue to employ the beneficiary in what it designates as an accountant position, the petitioner seeks to classify him 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 on June 18, 2013, concluding that the petitioner had not established that: (1) the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions; (2) the beneficiary is qualified to perform the duties of the proffered position in accordance with the applicable statutory and regulatory provisions; and (3) the beneficiary maintained the previously awarded H-1B status in accordance with the terms and conditions of the prior petition.

The petitioner, through former counsel, Mr. [REDACTED] submitted an appeal of the director's decision to the AAO. We reviewed the record of proceeding and determined that it did not contain sufficient evidence to overcome the bases for the director's denial.<sup>1</sup> Accordingly, we dismissed the appeal in a decision issued on March 31, 2014.

Newly-retained counsel for the beneficiary submits a Form I-290B (Notice of Appeal or Motion) to U.S. Citizenship and Immigration Services (USCIS) contesting our decision to dismiss the appeal. In the section of the Form I-290B entitled "Part 1. Information About Petitioner/Applicant," the beneficiary is identified as the affected party. We further note that this section contains the beneficiary's full name, alien registration number, and home address.

As stated in the provision at 8 C.F.R. § 103.5(a)(4), "[a] motion that does not meet applicable requirements shall be dismissed."

The regulation at 8 C.F.R. § 214.2(a)(1)(iii)(A), which outlines the filing requirements for a motion, states that a motion must be "in writing and signed by the affected party or the attorney or representative of record, if any[.]" Furthermore, the regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) defines the term "affected party," in relevant part, as follows:

For purposes of this section and § 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.**

<sup>1</sup> Because the question of the beneficiary's status is beyond our jurisdiction and therefore not relevant to the petitioner's appeal, we did not consider the director's comments in that regard.

(Emphasis added).

The Form I-290B in this matter was filed by counsel on behalf of the beneficiary, not the petitioner.<sup>2</sup> USCIS regulations specifically state that a beneficiary of a visa petition is not an affected party in a proceeding. 8 C.F.R. § 103.3(a)(1)(iii)(B). Consequently, the motion before us was improperly filed.

In addition, the motion must also be dismissed for failing to meet an 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 additional reason.

Again, 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, his counsel is not authorized to file the motion. *Id.*; 8 C.F.R. § 103.5(a)(1)(iii)(A). 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 our office will not be disturbed.

**ORDER:** The motion is dismissed.

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<sup>2</sup> With the Form I-290B, we note that counsel submitted a newly-executed Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28), signed by a representative of the petitioner, as well as a second Form G-28 signed by the beneficiary in his personal capacity. While it appears that counsel is authorized to represent the petitioner in "ALL MATTERS" before USCIS, the Form I-290B submitted in this matter indicated that the instant motion is filed on behalf of the beneficiary, not the petitioner. The regulations clearly require that every application, petition, appeal or motion be filed in accordance with the instructions on the form. See 8 C.F.R. § 103.2(a)(1); 8 C.F.R. § 103.2(b)(1). Specifically, the instructions to the Form I-290B state:

Per DHS regulations, the **beneficiary** of a visa petition that is denied or revoked by USCIS **MAY NOT** file an appeal or motion of that petition. Only a petitioner or applicant may file an appeal or motion. Similarly, an attorney or Board of Immigration Appeals (BIA-) accredited representative **MAY NOT** file an appeal or motion on the behalf of a beneficiary.

As the Form I-290B submitted for the motion was completed in a fashion that indicates that the motion was being submitted on behalf of the beneficiary (not the petitioner), the motion was improperly filed.