

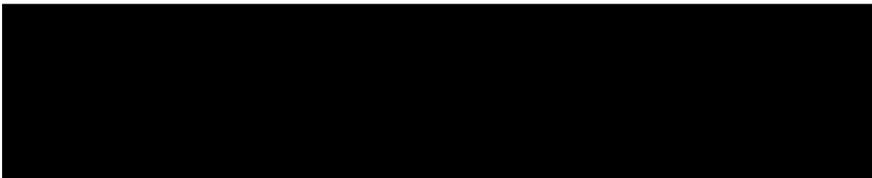
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U.S. Department of Homeland Security
20 Massachusetts Ave., NW, Rm. 3000
Washington, DC 20539



U.S. Citizenship
and Immigration
Services

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FILE: WAC 06 007 50880 Office: CALIFORNIA SERVICE CENTER Date: FEB 26 2007

IN RE: Petitioner:
Beneficiary:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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, a corporation that provides software consulting services, seeks to employ the beneficiary as a network system administrator. As the beneficiary had been in H or L status for over six years at the time the petition was filed, the petitioner seeks to extend for one year the beneficiary's H-1B classification as a temporary nonimmigrant worker under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the basis that the petition is not eligible for approval under section 106 of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) (Public Law 106-313), as amended by the 21st Century Department of Justice Appropriations Authorization Act, which exempts, in one-year increments, certain beneficiaries from the six-year limit that statute and regulation impose on the amount of time that nonimmigrant aliens may stay in the United States in H or L status. Specifically, the director determined that the AC21 exemption does not apply because the beneficiary's Application to Register Permanent Residence or Adjust Status has been denied.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(I) provides that an appeal filed with USCIS by a person not entitled to file it "must be rejected as improperly filed."

The regulation at 8 C.F.R. § 292.1 identifies the persons entitled to appear before USCIS in a representative capacity. A person appearing before USCIS in a representative capacity must file a Form G-28 (Notice of Entry of Appearance as Attorney or Representative), signed by the petitioner, that identifies the provisions of 8 C.F.R. § 292.1 under which he or she is entitled to represent the petitioner before USCIS. *See* 8 C.F.R. § 292.4(a).

By letter dated January 12, 2007, the AAO provided the person who signed the Form I-290B (Notice of Appeal) and submitted the appeal in this proceeding the opportunity to provide a Form G-28, signed by the petitioner, that specifically identifies the provision(s) of 8 C.F.R. § 292.1 under which that person qualifies to represent the petitioner. The letter also requested proof of that person's qualification under the provision(s) of 8 C.F.R. § 292.1 upon which she relied as authorization to appear in a representative capacity.

The person who filed the appeal (hereinafter referred to as the filer) has not provided the requested Form G-28 and proof of status as one entitled to represent the petitioner before USCIS. By letter to the AAO dated January 16, 2007, the filer acknowledges her belief that she is not entitled to file the appeal in "as a person entitled to represent others in USCIS proceedings." She states, however, that she had acted "on the insistence" of the petitioner, pursuant to a contract with the petitioner to serve as its Immigration Manager. She also asserts that she did not intend to act as a representative:

By sending those appeals I did not intend that I would be representing [the petitioner] before USCIS. Only that I was the one who filled the original form for them (as a continuation of my service of filling out the immigration forms). I was acting solely as an Immigration Consultant/Legal Document Assistant and filling out the forms/appeal based on the additional evidence or data and sending it off to the USCIS on their (employer or petitioner's request).

Under the facts of this proceeding, the filing of the appeal was an act of representation before USCIS that requires authority to so appear. According to the regulation at 8 C.F.R. § 1.1(m), representation before USCIS includes practice and preparation as defined at 8 C.F.R. §§ 1.1(i) and (k). 8 C.F.R. § 1.1(i) defines practice as:

[T]he act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the Service, or any officer of the Service, or the Board.

The regulation at 8 C.F.R. § 1.1(k) defines preparation as:

The term *preparation*, constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure.¹

The filer of the appeal was not authorized to appear as a representative in accordance with the provisions of 8 C.F.R. § 292.1. Accordingly, the AAO will reject the appeal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

ORDER: The appeal is rejected.

¹ At the time that the appeals were filed, the filer was authorized to serve as an immigration consultant in accordance with California Business and Professions Code (CBPC) §§ 22440-22448. As stated at CBPC § 22441(e), an immigration consultant “shall only offer nonlegal assistance or advice in an immigration matter.” CBPC § 22441(a) defines such advice as including, but not limited, to: (1) completing federal or state forms, “but not advising a person as to their answers on those forms”; (2) translating answers to questions on those forms; (3) securing supporting documents, such as birth certificates, needed to complete the forms; (4) when requested, submitting completed forms on a person’s behalf to USCIS; and (5) making referrals to persons who could undertake legal representation activities for a person in an immigration matter. At the Internet site http://ag.ca.gov/consumers/general/immigration_consultants.php, the Office of the California Attorney General states:

[A]n immigration consultant can only give you non-legal help, like translating your answers to the questions on U.S. Citizenship and Immigration Services (USCIS) forms, getting copies of supporting documents, and, if you ask them to, submitting the forms to the INS. Only an attorney can give you legal advice, such as advising you about what forms to file with the INS.

Under California law, authorization to serve as an immigration consultant does not extend to representing the petitioner before USCIS. The filer’s signature as the petitioner’s Immigration Manager constitutes representation before USCIS requiring a properly executed Form G-28.