

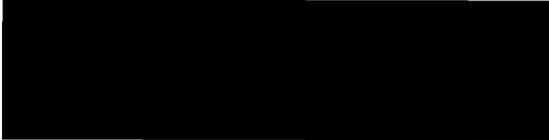
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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D2

Date: **NOV 01 2011** Office: CALIFORNIA SERVICE CENTER FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 AAO will reject the appeal.

On the Form I-129 visa petition the petitioner stated that it is an IT (information technology) software development and consulting firm. To employ the beneficiary in what it designates as a programmer analyst position, the petitioner endeavors 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 visa petition on three grounds. She found that the petitioner had failed to establish that it had standing to file the visa petition as the beneficiary's prospective United States employer within the meaning of that term at 8 C.F.R. § 214.2(h)(4)(ii) or as his agent within the meaning of that term at 8 C.F.R. § 214.2(h)(2)(i)(F); failed to establish that it would employ the beneficiary in a specialty occupation; and failed to establish that the Labor Condition Application submitted in support of the visa petition is valid for all of the locations where the beneficiary would work.

As will be explained below, the appeal filed in this matter will be rejected because it was not signed by the petitioner or the attorney of record as established by a properly filed Form G-28 Notice of Entry of Appearance as Attorney or Representative. The Forms G-28, I-129, and I-290B are not signed by the petitioning employer, as required by regulation, but instead by an attorney purportedly on behalf of the petitioner. Significantly, the attorney attempted to sign the visa petition under penalty of perjury on behalf of the petitioning employer. The record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative but this form is also devoid of any signature from the petitioning employer. Instead, an attorney signed this form on behalf of the petitioner. Finally, the introductory letter from the petitioner is also signed by an attorney purportedly on behalf of the petitioner. Thus, none of the required forms that relate to this individual beneficiary are signed by an official of the petitioning employer.

We acknowledge that the record contains a notarized document entitled "Restricted Power of Attorney" notarized March 21, 2008, signed by [REDACTED] the petitioner's president. The document purports to authorize an attorney "to sign [the petitioner's] H1B and other related petitions on [REDACTED] behalf for [the petitioner]." However, as will be discussed, this document does not meet the signature requirements of any of the controlling U.S. Citizenship and Immigration Services (USCIS) regulations.

I. Signatures on the Form I-290B and Form G-28

The appeal must be rejected because it was improperly filed. The regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

- (A) *Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it*

must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

- (B) *Meaning of affected party.* For purposes of this section and sections 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. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

An attorney for a petitioner may properly file an appeal on behalf of a petitioning entity in certain circumstances. However, the Form G-28 filed in this case does not establish that the attorney who filed the appeal represents the petitioner, because they were not signed by the petitioner.

The regulation at 8 C.F.R. § 292.4(a) (2010) provides:

An appearance shall be filed on the appropriate form by the attorney or representative appearing in each case. . . . When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature shall constitute a representation that under the provisions of this chapter he or she is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required. *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.*

(Emphasis added.)

The regulation at 8 C.F.R. § 103.2(a)(3) provides that where a notice of representation on Form G-28 is “not properly signed, the application or petition will be processed as if the notice had not been submitted.”¹

¹ Not only does the petitioner’s signature on the Form G-28 authorize representation by an attorney or accredited representative in matters before USCIS, it serves as a consent to disclosure of information covered under the Privacy Act of 1974. The Immigration and Naturalization Service (legacy INS) first implemented the requirement that a petitioner or applicant sign the Form G-28 in the final rule “Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits” 59 Fed. Reg. 1455 (Jan. 11, 1994). In response to several commenters who suggested that the attorney need be the only signatory on the Form G-28, the agency explained that other commenters had properly noted that capture of the petitioner’s signature on the Form G-28 “would address potential Privacy Act concerns.” *Id.* at 1455. The agency emphasized that the “petitioner must sign the Form G-28 to definitively indicate to the Service that he or she has authorized the person to represent him or her in the proceeding.” *Id.* A 2010 revision to the regulation at 8 C.F.R. § 292.4(a) retains the requirement that a petitioner or applicant sign the Form G-28. 75 Fed. Reg. 5225 (Feb. 2, 2010) (effective March 4, 2010).

The Forms G-28 accompanying the Forms I-129 and I-290B in this case were not signed by an employee or officer of the petitioning entity. Instead, both forms were signed on behalf of the petitioning entity by the attorney who submitted the Form I-129 and the appeal. However, the "Restricted Power of Attorney" document is not a properly executed Form G-28, and does not meet the requirements of the regulation at 8 C.F.R. § 292.4(a).

We acknowledge that the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) provides the following with respect to appeals by attorneys without a proper Form G-28:

- (i) *General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.
- (ii) *When favorable action warranted.* If the reviewing official decides favorable action is warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of the request. If Form G-28 is not submitted within the time allowed, the official may, on his or her own motion, under Sec. 103.5(a)(5)(i) of this part, make a new decision favorable to the affected party without notifying the attorney or representative.
- (iii) *When favorable action not warranted.* If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the AAU. The official shall also forward the appeal and the relating record of proceeding to the AAU. The appeal may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.

Requesting a proper Form G-28 signed by the petitioner in this matter, however, would serve no purpose as the underlying visa petition was not properly filed.

II. Signatures on the Form I-129 Petition

The Form I-129 petition identifies Dynamic Access Systems Inc. as the petitioner. In this instance, no employee or officer of Dynamic Access Systems signed the Form I-129.

Based on a review of the record, including the signature template in the "Restricted Power of Attorney," the only signatures on the visa petition are those of an individual who claims to represent the petitioner as counsel. The attorney signed Part 6 of the Form I-129, in the block provided for "Petitioner's Signature," thereby seeking to file the petition on behalf of what is purported to be the

actual United States employer. However, the regulations do not permit any individual who is not the petitioner to sign Form I-129.

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 USCIS 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 United States employer or that permits a petitioning United States employer to designate an attorney or accredited representative to sign the petition on behalf of the United States employer. 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. While the Service Center did not reject the petition, the AAO is not controlled by service center decisions. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at *3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001). The AAO conducts appellate review on a *de novo* basis, and it was in the exercise of this function that the AAO identified this ground for rejecting the petition. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

As will be discussed in more detail below, the requirement for a signature *under penalty of perjury* cannot be met by a "Restricted Power of Attorney" authorized signature. Practically, the signature requirement reflects a genuine Form I-129 program concern regarding the validity of the temporary job offer contained in Form I-129 petitions. To this end, the employer's signature serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

The signature line on the Form I-129 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." 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."

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration “for” another. Without the petitioner’s actual signature as declarant, the declaration is completely robbed of any evidentiary force. See *In re Rivera*, 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

The AAO notes that an entirely separate line exists for the signature of the preparer declaring that the form is “based on all information of which [the preparer has] any knowledge.” Thus, the Form I-129 petition acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Moreover, we note that the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney’s unsupported assertions on the petition and the job offer have no evidentiary value even if they are alleged on behalf of the petitioner via a power of attorney.

The AAO notes that the integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign all petitions, notices of appearance (for the same attorney), appeals, and all employment offers on behalf of the petitioner based on a broad assignment of authorization would leave the immigration system open to fraudulent filings. While the AAO does not find any malfeasance in this matter, it notes prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the alien or employer had no knowledge. *United States v. O’Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

III. Conclusion

The appeal has not been filed by the petitioner, or by any entity with legal standing in the proceeding. Therefore, the appeal has not been properly filed, and must be rejected. Moreover, the underlying petition also was not properly filed. Thus, further action on the petition cannot be pursued. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A). The petitioner may file a new, properly executed Form I-129 accompanied by the required filing fee and supporting evidence, without prejudice.

ORDER: The appeal is rejected.