

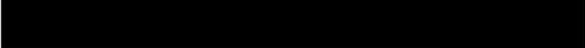


U.S. Citizenship
and Immigration
Services



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DATE: **DEC 05 2012** 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.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The director initially approved this H-1B nonimmigrant visa petition to employ the beneficiary as an H-1B temporary 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 petition was approved on December 19, 2001, for what was designated as a director of textile technology engineering operations position. However, upon subsequent review of the record, the director issued a Notice of Intent to Revoke (NOIR) finding that (1) the petitioner violated the terms and conditions of the approved petition on the following grounds: (a) the petitioner failed to pay the wage attested in the Form I-129 and (b) the beneficiary was not employed in the proffered position as described in the approved petition; and (2) the petitioner violated the requirements of paragraph (h) of 8 C.F.R. § 214.2 by failing to establish the requisite employer-employee relationship with the beneficiary for the entire duration of the approved H-1B status. Counsel for the beneficiary responded to the NOIR, but the director ultimately revoked the approval of the petition on the grounds identified above. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

Counsel for the beneficiary, [REDACTED] filed the Form I-290B in this matter. Although it was timely filed and accompanied by the required fee, the Entry of Appearance as Attorney or Representative (Form G-28) that was submitted was signed by the beneficiary, not by an authorized representative of the petitioner.¹ The beneficiary filed the only documents submitted on appeal, which are a new Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) signed by the beneficiary and a Notice of Appeal or Motion (Form I-290B) signed by the beneficiary's counsel. The record of proceeding does not contain a new Form G-28 signed by the petitioner for the beneficiary's counsel permitting his appearance on its behalf in the Form I-290B proceeding before the AAO.²

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). Moreover, the regulations at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically state that a beneficiary of a visa petition is not an affected party and does not have any legal standing in a proceeding. As the beneficiary and his representative have no legal standing in this proceeding, counsel for the beneficiary is not authorized to file the appeal on behalf of the petitioner, and it must therefore be rejected as improperly filed. 8 C.F.R. § 103.3(a)(1)(iii)(B); 8 C.F.R. § 103.3(a)(2)(v)(A)(1); 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i).

¹ The AAO notes that the beneficiary is listed as one of the petitioner's corporate officers according to information provided on the website of the Florida Department of State Division of Corporations. *See Florida Department of State Division of Corporations available at <http://ccfcorp.dos.state.fl.us/>* [REDACTED] (last visited November 14, 2012). However, there is no evidence in the record that the beneficiary was legally authorized to sign as a representative on behalf of the petitioner with regard to the appeal before the AAO. Specifically, the Form G-28 submitted by counsel clearly limits his representation/appearance to the beneficiary, and nowhere on the form is it indicated that the beneficiary is acting on behalf of the petitioner.

² Effective March 4, 2010, the regulation at 8 C.F.R. § 292.4(a) requires that a "new [Form G-28] must be filed with an appeal filed with the [AAO]." Title 8 C.F.R. § 292.4(a) further requires that the Form G-28 "must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS."

As the appeal was not properly filed, it must be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

ORDER: The appeal is rejected.