



U.S. Citizenship
and Immigration
Services

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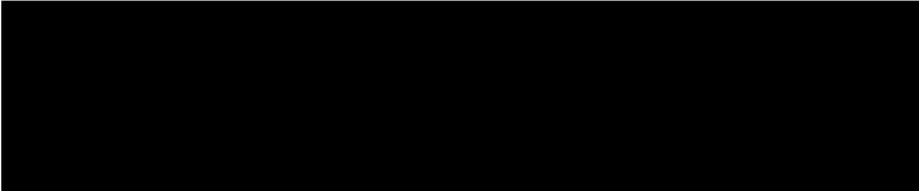
DATE: **DEC 13 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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 IN THE FORM I-129 PROCEEDING:



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,

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

DISCUSSION: The director of the California Service Center 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, self-described as an importer/wholesale business, filed a petition to classify the beneficiary as a temporary worker in an H-1B specialty occupation, 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).

The director denied the petition, finding that the proffered position was not a specialty occupation. An appeal was subsequently filed with the AAO.

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.”

In this instance, the person who filed the appeal is also the person who, pursuant to a properly executed and previously filed Form G-28, had represented the petitioner in the adjudication of this petition until the director’s November 2, 2011 denial decision. However, that person filed the appeal without submitting into the record a newly executed Form G-28, personally signed by both him as attorney and by an authorized official of the petitioning entity.

On November 1, 2012, via facsimile transmission (fax), the AAO sent a request for a new Form G-28 to the aforementioned person who had filed the appeal. Specifically, the AAO advised that without a new, valid, and fully executed Form G-28, signed by an official of the petitioning entity authorizing this person to represent the petitioner, the AAO would not consider the appeal to have been properly filed.

Pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(2) and its subclauses, the faxed request specified fifteen (15) calendar days as the period within which a duly executed Form G-28 would have to be submitted to the AAO, either by mail or fax. The request also cautioned that failure to timely respond to the request would result in the rejection of the appeal.

On November 6, 2012, the aforementioned person who had filed the appeal faxed a letter to the AAO, in which he states that he was “advised by the Petitioner that it no longer wishes to pursue the appeal.” The letter was not accompanied by a Form G-28.

Absent a new and properly executed Form G-28, a person cannot be considered the petitioner’s attorney of record with regard to the appeal currently before the AAO. U.S. Citizenship and Immigration Services regulations specifically prohibit the filing of an appeal by an attorney or representative without a properly executed Form G-28 entitling that person to file the appeal. 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i).

An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(A)(I). As the person who filed this appeal is not a recognized party in this Form I-290B proceeding, he is not authorized to file an appeal. *Id.*; 8 C.F.R. § 103.3(a)(1)(iii)(B).

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.