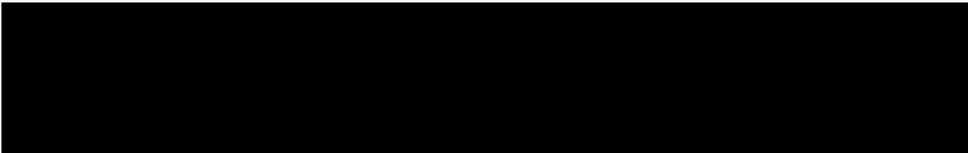


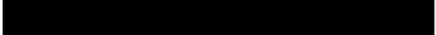
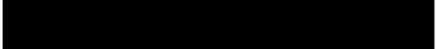


U.S. Citizenship
and Immigration
Services



D2

Date: **NOV 21 2012** Office: VERMONT 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)

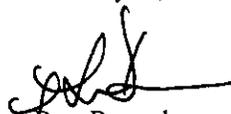
ON BEHALF OF PETITIONER:

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, Vermont Service Center, (“the director”) denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

On the Form I-129, Petition for Nonimmigrant Worker, the petitioner claims it provides software development services and that it was established in 1999 and employs 350 personnel. The petitioner seeks to employ the beneficiary as a programmer analyst/web developer and, therefore, 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 petition because the petitioner had not provided sufficient evidence to establish the ultimate employment of the beneficiary and, accordingly, the petitioner had not established the proffered position as a specialty occupation. On August 29, 2011, an attorney filed a Form I-290B to appeal the director’s adverse decision, checking the box indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days. The attorney subsequently provided a brief and additional documentation. The attorney did not however, attach a Form G-28, Notice of Entry of Appearance as Attorney or Representative, along with the appeal filing.¹

On October 24, 2012, the AAO sent a facsimile to the attorney requesting that she submit a properly executed Form G-28 within seven days.²

The regulation at 8 C.F.R. § 292.4(a) governs appearances by attorneys or representatives. It states, in pertinent part: “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.” Here, the record on appeal does not include a properly filed Form G-28. An appeal that is filed without a properly executed Form G-28 is considered an improperly filed appeal and it must be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i).³

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the petitioner to establish eligibility for the benefit it is seeking. Here, the petitioner has not met its burden. Accordingly, the AAO rejects the appeal.

ORDER: The appeal is rejected. The petition remains denied.

¹ In accordance with the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a), as well as the instructions to the Form I-290B, a “new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office.” This regulation applies to all appeals filed on or after March 4, 2010. See 75 Fed. Reg. 5225 (Feb. 2, 2010).

² On November 5, 2012, the AAO received a letter from the attorney withdrawing her representation.

³ The AAO also notes the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii), which provides that an appeal may be considered properly filed as of its original filing date only if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.