



U.S. Citizenship
and Immigration
Services

D2



Date: **OCT 18 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center (the director) denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The petition will remain denied.

The petitioner describes itself on the Form I-129, Petition for a Nonimmigrant Worker, as a wholesaler/retailer of food and fish products established in 1995 with approximately 350 employees. It seeks to employ the beneficiary as a food service director and 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).

On June 3, 2010, the petitioner filed a Form I-129 and on January 31, 2011, the director denied the petition determining that the petitioner had not established: (1) that the position qualifies for classification as a specialty occupation; and (2) that the beneficiary is qualified to perform the duties of the proposed position. On February 22, 2011, an attorney filed a Form I-290B, Notice of Appeal or Motion, to appeal the director's adverse decision and attached a brief. 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 September 14, 2012, the AAO sent a facsimile to the attorney requesting that he submit a properly executed Form G-28 within seven days. To date, no response to the facsimile has been received.

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).²

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 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.