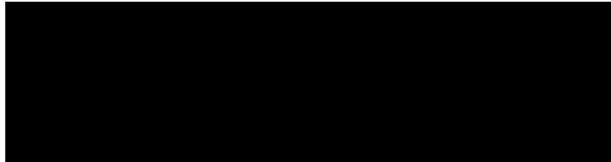


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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**



b2

Date: **SEP 21 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the instant nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly filed.

In a letter submitted in support of the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a provider of "health care and homecare services." To employ the beneficiary in what it designates as a medical administrative manager position, the petitioner endeavors to classify her as a nonimmigrant worker in a 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 on December 13, 2010, concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

Alleged counsel for the petitioner subsequently filed a timely appeal on January 10, 2011.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) states, in part, the following:

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.

Furthermore, 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).

In the present matter, counsel claimed to file an appeal on behalf of the petitioner and submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative. However, the Form G-28 filed with the Form I-290B, Notice of Appeal, was not "new" in that (1) the petitioner and counsel signed the Form G-28 prior to the filing of the Form I-129, and (2) the Form G-28 indicates that counsel's appearance is in regard to the Form I-129H, not the appeal. Thus, as the submitted Form G-28 did not meet the requirements of the regulation at 8 C.F.R. § 292.4(a) or the instructions to the Form I-290B, counsel failed to establish that he represents the petitioner as an attorney or accredited representative with regard to the instant appeal before the AAO.

In accordance with 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii), the AAO sent counsel a facsimile on September 5, 2012, notifying him that a new, properly executed Form G-28, signed by counsel and the consenting affected party, must be submitted to the AAO within fifteen calendar days. On September 7, 2012, counsel faxed a signed Form G-28 to the AAO. However, the faxed Form G-28 (1) was signed and dated by the petitioner and counsel on April 5, 2010, (2) indicates that counsel's appearance is in regard to the Form I-129B, not the Form I-290B appeal, and (3) appears to be the same Form G-28 that was filed with the Form I-129.¹ Consequently, the recently submitted Form G-28 is not "new." The AAO

¹ It is noted that it appears counsel made the following changes to the April 5, 2010 Form G-28 prior to its

therefore concludes that the appeal was improperly filed and must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1), which calls for rejection of an improperly filed appeal, where the person filing it is not entitled to do so.

Finally, it is noted for the record that the petitioner only requested a one-year period of intended employment, valid from October 1, 2010 to October 1, 2011. As this intended employment period has already passed, it is unclear what remedy or benefit could be granted in this matter, even if the appeal had been properly filed and the ineligibility issues overcome on appeal.

ORDER: The appeal is rejected.

resubmission to the AAO on September 7, 2012: (1) the "H" following "I-129" was changed by pen to a "B"; (2) "By [REDACTED]" was typed on the Form G-28 on the petitioner's signature line; and (3) "California Supreme Court" was typed onto the Form G-28 in Part 2, where previously, no information had been provided regarding counsel's bar membership.