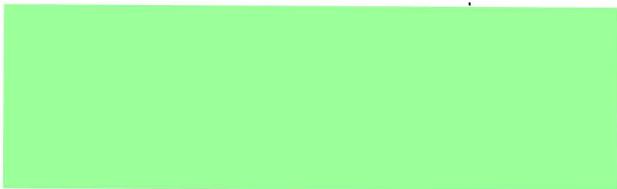


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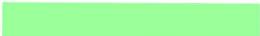
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: APR 02 2013

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)

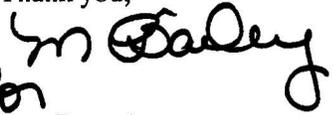
ON BEHALF OF PETITIONER:

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,


for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

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

The petitioner submitted a Form I-129, Petition for Nonimmigrant Worker, to the California Service Center on August 12, 2011. On the Form I-129 visa petition, the petitioner describes itself as an enterprise engaged in pension and 401k planning that was established in 1996. In order to employ the beneficiary in what it designates as a pension benefits analyst position, the petitioner seeks 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, concluding that the petitioner failed to establish that the proffered position is a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner's counsel in the Form I-129 proceeding filed a Form I-290B, Notice of Appeal or Motion, on May 17, 2012. The Form I-290B was not accompanied by a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.

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." 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." This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010).

Moreover, 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.

The record, however, does not contain a **new, properly executed** Form G-28 personally signed by both counsel and by an authorized official of the petitioning entity.

In accordance with 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii), the AAO sent counsel a facsimile on January 8, 2013, notifying him that a "**new** and properly executed Form G-28," signed by him and the consenting affected party, must be submitted to the AAO within fifteen (15) calendar days. The facsimile notified counsel that if the required document was not submitted within the allotted time, the appeal would be rejected as improperly filed pursuant 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

On January 15, 2013, prior counsel responded to the request by submitting a photocopy of the Form G-28 submitted with the initial Form I-129 petition, substituting "I-290B" for "I-129" under Part 1(A) of the form. The AAO notes that the photocopy is identical in every way to the previously submitted Form G-28 except for the alteration to the form number, as described above. Notably, both prior counsel and the petitioner signed the Form G-28 on August 9, 2011, approximately eight months before the director issued the decision denying the petition. The record

(b)(6)

of proceeding does not contain a new Form G-28 filed with the appeal in accordance with the pertinent regulations. Therefore, the AAO concludes that the appeal was improperly filed and must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I), which calls for rejection of an improperly filed appeal, where the person filing it is not entitled to do so.

ORDER: The appeal is rejected.