



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 02 2013

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary: [REDACTED]

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 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 Vermont Service Center on May 9, 2011. On the Form I-129 visa petition, the petitioner describes itself as a retail jewelry business established in 1990. In order to employ the beneficiary in what it designates as an operations manager position, the petitioner seeks 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On January 23, 2012, 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. Alleged counsel for the petitioner subsequently filed a Form I-290B, Notice of Appeal or Motion. 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). However, counsel failed to respond to this request within the allotted time period (or thereafter). 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)(1), 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.