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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 03 2013 OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

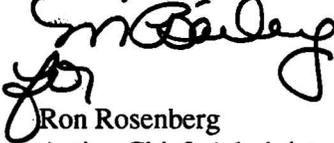
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER IN THE FORM I-129 PROCEEDING:

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 June 9, 2011. In the Form I-129 visa petition, the petitioner describes itself as a date processing, consulting and development business established in 2008. In order to employ the beneficiary in what it designates as a computer programmer/analyst 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on January 3, 2012, finding that the petitioner: (1) failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions; (2) failed to comply with the itinerary requirement under 8 C.F.R. § 214.2(h)(2)(i)(B); and (3) failed to establish that the Labor Condition Application (LCA) properly supports the Form I-129 petition.

Subsequently, a Form I-290B, Notice of Appeal or Motion, signed by counsel was filed on February 3, 2012. The Form I-290B was accompanied by a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.

Upon review of the record, as will be discussed in detail below, the AAO concludes that the Form I-290B was improperly filed because the Form G-28 was not signed by the petitioner's designated authorized representative.¹ Further, the underlying Form I-129 petition was also improperly filed because neither the petition nor the supporting LCA were signed by the petitioner's designated authorized representative. Thus, even if the Form I-290B had been properly filed, which it was not, there would be no valid proceeding upon which to base an appeal.

General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. §103.2(a)(1) as follows:

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission. . . .

Further discussion of the filing requirements for applications and petitions is found at 8 C.F.R. § 103.2(b)(1), which states in pertinent part:

¹ As will be discussed, [REDACTED] did not properly file the instant petition. However, all references to "petitioner" in this decision refer to this entity.

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions.

Thus, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *Id.* A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

The regulation at 8 C.F.R. § 103.2(a)(2), which concerns the requirement of a signature on applications and petitions, states the following:

An applicant or petitioner must sign his or her benefit request. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the benefit request, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on a benefit request that is being filed with the USCIS is one that is either handwritten or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format.

The regulations generally require a handwritten signature unless the petition is filed electronically. It makes no provision for proxy signatures, unless the person is less than 14 years old or mentally incompetent.

In accordance with the 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). The instructions to the Form I-290B state that "[i]f the appeal or motion is filed by an attorney or representative without a properly executed Form G-28, it will be dismissed or rejected." Furthermore, the instructions to the Form G-28 state that the petitioner must sign the form.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

- (B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. . . . An affected party may be

represented by an attorney or representative in accordance with part 292 of this chapter.

Furthermore, the regulation at 8 C.F.R. § 103.3(a)(2)(v) states the following:

(A) *Appeal filed by person or entity not entitled to file it—*

- (1) *Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.
- (2) 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.

Upon review of the record of proceeding, the AAO observes that there are two primary issues to be addressed. As will be discussed, the AAO finds that (1) the Form I-129 petition and LCA were improperly filed in this matter; and (2) the Form I-290B appeal was not properly filed, and must be rejected.

More specifically, the Form I-129 petition, LCA, and associated Form G-28, identify [REDACTED] as the person designated by the petitioner to sign on its behalf. These documents are signed [REDACTED] indicating that it was signed for [REDACTED]. The signature on these forms differ substantially from the signature of [REDACTED] as signed on numerous agreements submitted as evidence in support of the instant petition, including: (1) an offer agreement for the beneficiary dated March 15, 2011; (2) a supplier agreement with [REDACTED] dated April 1, 2011; (3) a channel partner agreement with [REDACTED] dated September 17, 2010; (4) a master subcontract agreement with [REDACTED] dated July 29, 2009; (5) an independent contractor consulting agreement with [REDACTED] dated March 8, 2011; and (6) a consulting agreement with [REDACTED] dated June 13, 2011. The agreements are all signed [REDACTED]. This signature is substantially different from the signature of [REDACTED] that appears on the Form I-129, the LCA, and the associated Form G-28. There is no evidence in the record of proceeding to indicate that the petitioner's authorized representative delegated his signature authority under the exceptions permitted by the regulation.

The signature requirement holds petitioners accountable for their responsibilities under the H-1B program. By signing the Form I-129 (pages 6 and 12), the designated authorized representative confirms for the petitioner, "under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct" and "agrees to, and will abide by, the terms of the labor condition application (LCA) for the duration of the beneficiary's authorized period of stay for H-1B employment" as well as liability "for the reasonable

costs of return transportation of the alien abroad if the beneficiary is dismissed from employment by the employer before the end of the period of authorized stay." When the authorized official signs the LCA, Declaration of Employer (section K), he/she confirms (1) the attestation that the statements in the LCA are true and accurate; (2) that the petitioner "agree[s] to comply with the Labor Condition Statements as set forth in the Labor Condition Application - General Instructions Form ETA 9035CP and with the [U.S.] Department of Labor [(DOL)] regulations (20 CFR part 655, Subparts H and I)"; and (3) the petitioner's agreement to make the LCA, its supporting documentation, and other records available to DOL.

To be valid, 28 U.S.C. § 1746 requires that declarations be "subscribed" by the declarant "as true under penalty of perjury." In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: "Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury."

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration "for" another. Without the authorized official's actual signature as the declarant, the declaration is completely robbed of evidentiary force. *See In re Rivera*, 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

The AAO notes that the integrity of the immigration process depends on the authorized official signing the immigration forms under penalty of perjury. Allowing someone other than the petitioner's authorized official to sign a petition and LCA on behalf of the petitioner would leave the immigration system open to fraudulent filings.²

In the instant case, [REDACTED] (the petitioner's designated authorized representative) did not personally sign the Form I-129, LCA and accompanying Form G-28. Although the director reviewed the petition based on its merits, the AAO notes that the petition was improperly filed, and thus should have been rejected by the director at the time of filing. That is, pursuant to 8 C.F.R. § 103.2(a)(7), a petition which is not properly signed shall be rejected as improperly filed, and no receipt date assigned to the petition. The AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Thus, while the Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Accordingly, the AAO finds that the instant petition should have been rejected because the petitioner failed to properly file the petition and LCA.

² The AAO notes prior examples where individuals have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the petitioner had no knowledge. *United States v. O'Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

Moreover, the signature on the Form G-28 accompanying the Form I-290B appeal was signed [REDACTED] indicating that it was signed for [REDACTED]. Notably, the signature that purported to authorize counsel to file the instant Form I-290B appeal differs substantially from the signature of [REDACTED] on the Form I-129, LCA and previously submitted Form G-28, as well as the signature that appears on the above listed agreements. Thus, the documentation submitted to USCIS contains three distinct signatures for [REDACTED] (although the designation of [REDACTED] on the forms indicates that they were signed for [REDACTED]).

An attorney for a petitioner may properly file an appeal on behalf of a petitioning entity in certain circumstances. However, in the instant case, the documentation does not establish that the petitioner's designated authorized representative, [REDACTED] personally signed the Form G-28 that was submitted with the appeal. Again, there is no evidence in the record of proceeding to indicate that the petitioner's authorized official delegated his signature authority under the exceptions permitted by the regulation. The regulation at 8 C.F.R. § 103.2(a)(3) provides that where a notice of representation on a Form G-28 is "not properly signed, the benefit request will be processed as if the notice had not been submitted."³

The Form G-28 filed in this case does not establish that the attorney who filed the appeal represented the petitioner in this matter because the accompanying Form G-28 was not personally signed by the petitioner's designated authorized representative.⁴ The record does not contain a properly executed Form G-28 personally signed by both counsel and by the petitioner's designated authorized representative.

Therefore, the AAO concludes that even if the underlying Form I-129 petition and LCA had been properly filed, which they were not, the instant 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.

Accordingly, the AAO finds the appeal has not been properly filed, and must be rejected.⁵

³ Not only does the petitioner's signature on the Form G-28 authorize representation by an attorney or accredited representative in matters before USCIS, it serves as consent to disclose information covered under the Privacy Act of 1974. The Immigration and Naturalization Service (legacy INS) first implemented the requirement that a petitioner or applicant sign the Form G-28 in the final rule "Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits" 59 Fed. Reg. 1455 (Jan. 11, 1994). The agency emphasized that the "petitioner must sign the Form G-28 to definitively indicate to the Service that he or she has authorized the person to represent him or her in the proceeding." *Id.*

⁴ Notably, there is no evidence to support an assertion, that the person who actually signed the Form G-28 was an affected party ("the person or entity with legal standing") in this matter.

⁵ If the petitioner wishes to pursue H-1B classification for the beneficiary, it may file a new, properly executed Form I-129 accompanied by the required filing fee(s) and supporting evidence for consideration by USCIS.

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ORDER: The appeal is rejected.