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

(b)(6)

DATE: APR 2 9 2013 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 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 petition for a nonimmigrant visa. 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 September 19, 2011. On the Form I-129 visa petition, the petitioner describes itself as a retail store of consumer products established in 2002. In order to employ the beneficiary in what it designates as a business analyst/accountant 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).

The Form I-129 in this matter was accompanied by a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, which purports to have been duly executed by The document is marked in Part 2 to indicate that is an attorney in good standing in the State of New York. The form is not dated and does not contain an attorney bar number as requested in Part 3.

The Form I-290B, Notice of Appeal or Motion, in this matter is signed which indicates that did not personally sign the Form I-290B. It appears from the record of proceeding that the initials stand for whose job title is listed as "Legal Assistant." There is no evidence in the record of proceeding that is an attorney or is otherwise qualified to represent the petitioner.

The regulation at 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented "by an attorney in the United States, as defined in § 1.2 of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." Title 8 C.F.R. § 292.1(a)(3) also permits reputable individuals appearing without direct or indirect remuneration to represent a petitioner in certain circumstances. An accredited representative is defined in 8 C.F.R. § 292.1(a)(4) as a representative of an organization described in 8 C.F.R. § 292.2, which, in turn, states that only nonprofit religious, charitable, social service, or similar organizations recognized by the Board of Immigration Appeals may be so classified. In this case, the record fails to establish that the individual who signed the Form I-290B falls within any of the categories of representatives authorized by the regulations to file an appeal on behalf of the petitioner.

Furthermore, the instructions to the Form G-28 provide that the signature of an attorney or accredited representative on the Form G-28 "shall constitute a representation that under the provisions of this chapter he is authorized and qualified to represent." *See also* 8 C.F.R. § 1003.102(j)(1) ("The signature of a practitioner on any filing . . . or other document constitutes certification by the signer that the signer has read the filing . . . and that, to the best of the signer's knowledge, information, and belief, . . . the document is well-grounded in fact"). There is no provision that would allow an attorney or accredited representative to delegate his or her signature authority. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(A)(*1*). Thus, the appeal must be rejected as it was not properly filed.

The AAO further notes that, even if the appeal in this matter were deemed to be properly filed (which it was not), a cursory examination of the Form I-290B reveals another issue that would preclude sustaining the appeal. In the instant case, box B at section 2 of the Form I-290B was checked, indicating that the petitioner would send a brief and/or evidence within 30 days. However, the AAO has not received a brief and/or additional evidence. Accordingly, the record of proceeding is deemed complete as currently constituted.

The only comment submitted about the appeal is the following statement at Part 3 of the Form I-290B:

> We will provide a brief and further information for the following issues:
>
> - The new and old businesses are the same owner and are the same.
> - There was a labor certificate filed on behalf of the petitioner and we are awaiting
> - more information from the US Dept of Labor
> - We will submit the additional information requested.

(Errors in the original.) The statement on appeal contains no specific assignment of error. The AAO notes that the statement contained in Part 3 of the Form I-290B is not responsive to the basis of the director's denial of the Form I-129 petition, and no "additional information" was requested in the director's decision. An offer to provide further information in the future is an insufficient basis for an appeal.[1] The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." In the instant case, the petitioner has failed to identify an erroneous conclusion of law or a statement of fact as a basis for the appeal. Thus, even if the appeal were not rejected as improperly filed, it would be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

As the appeal was not properly filed, it must be rejected.[2] 8 C.F.R. § 103.3(a)(2)(v)(A)(*1*).

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[1] The AAO observes that no additional evidence has been received from the petitioner. The AAO nonetheless notes that the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Id.* A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

[2] As the appeal is rejected, the AAO will not further discuss the additional issues and deficiencies that it observes in the record of proceedings.

ORDER: The appeal is rejected.