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 29 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

A Form I-129, Petition for Nonimmigrant Worker, was submitted to the California Service Center on behalf of the petitioner on May 9, 2012. The Form I-129 visa petition describes the petitioner as a software development and staff augmentation business established in 1997. In order to employ the beneficiary in what is designated as an ETL/Teradata Developer 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 October 12, 2012, the director denied the petition, concluding that the petitioner failed to establish eligibility for the benefit sought 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 matter is now before the AAO on appeal. The appeal will be rejected.

As will be explained below, the appeal filed in this matter will be rejected because it was not signed by the petitioner or the attorney of record as established by a properly filed Form G-28, Notice of Entry of Appearance as Attorney or Representative. More specifically, the Form G-28, Form I-129, and Form I-290B are not signed by the petitioning employer, but instead by an attorney purportedly on behalf of the petitioner. Furthermore, the letter of support dated May 7, 2012 is also signed by an attorney purportedly on behalf of the petitioner.

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.

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

> (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. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

The regulation at 8 C.F.R. § 292.4(a) provides:

> An appearance must be filed on the appropriate form as prescribed by DHS by the attorney or accredited representative appearing in each case. *The form 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. . . .* When an appearance is made by a person acting in a representative capacity, his or

> her personal appearance or signature will constitute a representation that under the provisions of this chapter he or she is authorized and qualified to appear as a representative as provided in 8 C.F.R. 103.2(a)(3) and 292.1. Further proof of authority to act in a representative capacity may be required.

(Emphasis added).

An attorney for a petitioner may properly file an appeal on behalf of a petitioning entity under certain circumstances. Here the record of proceeding contains a Form G-28 dated November 7, 2012 that was submitted with the appeal. However, the document does not establish that the attorney represents the petitioner, because it was not signed by the petitioner. Instead, it was signed on behalf of the petitioning entity by the attorney who submitted the appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) provides the following with respect to appeals by attorneys without a proper Form G-28:

> (i) *General.* 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. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.
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> (ii) *When favorable action warranted.* If the reviewing official decides favorable action is warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of the request. If Form G-28 is not submitted within the time allowed, the official may, on his or her own motion, under Sec. 103.5(a)(5)(i) of this part, make a new decision favorable to the affected party without notifying the attorney or representative.
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> (iii) *When favorable action not warranted.* If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the AAU. The official shall also forward the appeal and the relating record of proceeding to the AAU. The appeal may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.

Requesting a properly completed Form G-28 signed by the petitioner in this matter would serve no purpose as the underlying visa petition was not properly filed. More specifically, the Form I-129 petition identifies [redacted] as the petitioner. In this instance, an employee or officer of [redacted] did not sign the Form I-129 and accompanying Form G-28. 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."[1]

Based on a review of the record, the only signatures on the visa petition are those of an individual who claims to represent the petitioner as counsel. The attorney signed Part 7 of the Form I-129 in the signature block provided for the "Petitioner's Signature," as well as the signature blocks in Section I of the Form I-129 Supplement H. The attorney thereby sought to file the petition on behalf of what is purported to be the actual United States employer. However, the regulations do not permit any individual who is not the petitioner to sign Form I-129 except in limited circumstances. More specifically, the regulation states the following:

> *Signature.* 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 application or petition, 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 an [*sic*] 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.

8 C.F.R. § 103.2(a)(2). The regulation generally requires 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. 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 AAO acknowledges that the record contains a notarized document titled "Limited Power of Attorney." The document was signed by [redacted] the petitioner's president. The document purports to authorize counsel to perform the following:

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[1] 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 a consent to disclosure of 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). In response to several commenters who suggested that the attorney need be the only signatory on the Form G-28, the agency explained that other commenters had properly noted that capture of the petitioner's signature on the Form G-28 "would address potential Privacy Act concerns." *Id* at 1455. 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.*

> To exercise or perform any act, power, duty, right or obligation whatsoever that I now have, or may subsequently acquire the legal right, power or capacity to exercise or perform, in conjunction with, arising from or relating to the submission and execution of all documents necessary to the filing of USCIS petitions (Forms I-129, I-140, I-485 and other immigration petitions) on behalf of [the petitioner].

The signature line on the Form I-129 for the petitioner provides that the petitioner is certifying, "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." 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 petitioner's actual signature as declarant, the declaration is completely robbed of any 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 actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign "all documents necessary to the filing of USCIS petitions" on behalf of the petitioner based on a broad assignment of authorization would leave the immigration system open to fraudulent filings. While the AAO does not allege malfeasance in this matter, it notes prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the alien or employer 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).

Thus, the requirement for a signature *under penalty of perjury* cannot be met by a "Power of Attorney" authorized signature. Practically, the signature requirement reflects a genuine concern regarding the validity of the temporary job offer contained in Form I-129 petitions. To this end, the employer's signature serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

The AAO notes that an entirely separate line exists for the signature of the preparer declaring that the form is "based on all information of which [the preparer has] any knowledge." Thus, the Form I-129 petition acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Moreover, the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*,

17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney's unsupported assertions on the petition and support letter lack evidentiary value even if they are alleged on behalf of the petitioner via a power of attorney.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The petition has not been properly filed because the petitioning U.S. employer did not sign the petition. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the Service Center did not reject the petition, the AAO is not controlled by service center decisions. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at 3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001). The AAO conducts appellate review on a *de novo* basis, and it was in the exercise of this function that the AAO identified this ground for rejecting the appeal. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The appeal has not been filed by the petitioner, or by any entity with legal standing in the proceeding. Therefore, the appeal has not been properly filed, and must be rejected. Moreover, the underlying petition also was not properly filed. Thus, further action on the petition cannot be pursued. Accordingly, the AAO need not examine the director's bases for denial of the petition as the issues are moot. 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.

ORDER: The appeal is rejected.