



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **AUG 02 2013** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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

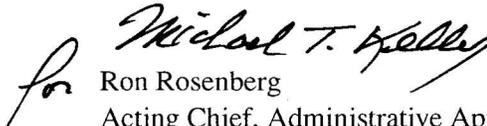
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on a motion to reconsider. The motion will be rejected as improperly filed.

The petitioner, which describes itself as a manufacturer of bread, relish and syrup, seeks to employ the beneficiary as a chef. Accordingly, the petitioner endeavors to classify the beneficiary 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 June 6, 2011, finding that the petitioner failed to establish that the proffered position was a specialty occupation.

The attorney who represented the petitioner prior to the director's decision denying the petition also represented the petitioner on the appeal of that decision, pursuant to a new Form G-28, signed by both the petitioner and that attorney on a date after the director issued the adverse decision.¹

However, that same attorney who represented the petitioner on appeal and earlier, pursuant to properly signed and dated Forms G-28, now attempts to enter an appearance on the motion pursuant to a Form G-28 that was signed by himself and the beneficiary only.² In effect, then, the attorney who had previously appeared on the petitioner's behalf prior to the AAO's decision on the appeal is now attempting to file a motion on behalf of the beneficiary.

U.S. Citizenship and Immigration Services regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). Moreover, the regulations at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically state that a beneficiary of a visa petition is not an affected party and does not have any legal standing in a proceeding. As the beneficiary and his representative have no legal standing in this proceeding, counsel for the beneficiary is not authorized to file the motion on behalf of the petitioner, and it must therefore be rejected as improperly filed. 8 C.F.R. § 103.3(a)(1)(iii)(B).

As the motion to reconsider was not properly filed, it must be rejected.

ORDER: The motion is rejected.

¹ Effective March 4, 2010, the regulation at 8 C.F.R. § 292.4(a) requires that a "new [Form G-28] must be filed with an appeal filed with the [AAO]." 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."

² The AAO observes that this is the lone Form G-28 submitted on motion.