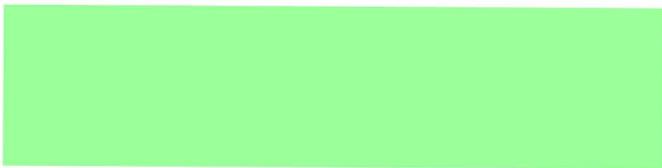


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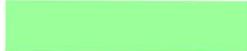
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **DEC 26 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:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly filed.

The petitioner filed a Form I-129 (Petition for a Nonimmigrant Worker) with the Vermont Service Center on October 24, 2012. In the Form I-129 visa petition, the petitioner described itself as a home health agency established in 2005. In order to employ the beneficiary in what it designates as a clinical coordinator 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 director denied the petition on June 24, 2013, concluding that the petitioner failed to establish (1) that the proffered position is a specialty occupation in accordance with the applicable statutory and regulatory provisions; and (2) that the beneficiary is qualified for a specialty occupation.

Thereafter, [REDACTED] filed an appeal. The Form I-290B (Notice of Appeal or Motion) was not accompanied by a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. The Form G-28 submitted with the Form I-290B failed to establish that the petitioner is represented by an attorney or accredited representative with respect to the Form I-290B filed with the AAO. Specifically, comparing the signatures in the record of proceeding, the AAO notes that the signature on the Form G-28 is visibly different from signatures on other forms in the record. Thus, it has not been established that the signature on the Form G-28 is from the petitioner's authorized official. Without sufficient evidence that the petitioner's authorized official has signed the Form G-28 in his/her authorized capacity on behalf of the petitioner, the AAO cannot find that the Form I-290B was properly filed by the affected party or its representative.¹ Moreover, the Form G-28 indicates that it is for the applicant, rather than for the petitioner.

In accordance with the 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 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.

¹ It must also be noted that an "affected party" means the person or entity with legal standing in a proceeding. 8 C.F.R. § 103.3(1)(iii)(B). It does not include the beneficiary of a visa petition. *Id.*

The record, however, does not contain a new, properly executed Form G-28 personally signed by both Mr. [REDACTED] and by an authorized official of the petitioning entity. Moreover, 8 C.F.R. § 292.4(a) provides the AAO with the right to require "[f]urther proof of authority to act in a representative capacity."

In accordance with 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii), the AAO notified Mr. [REDACTED] on November 27, 2013 that a properly executed Form G-28, signed by him and the consenting affected party, must be submitted to the AAO within fifteen (15) calendar days. However, Mr. [REDACTED] 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.

Further, even if the appeal had been properly filed (which it was not), the appeal would be dismissed and the petition denied because of a critical issue pertaining to the petitioner's eligibility to extend its employment of the beneficiary in H-1B status. Specifically, the petition would be denied as it was filed after the expiration of the petition it sought to extend. See 8 C.F.R. § 214.2(h)(14) (stating that a "request for a petition extension may be filed only if the validity of the original petition has not expired"). In this matter, the petition that the petitioner sought to extend (EAC 09 255 51465) was valid until Monday, October 1, 2012. The instant petition was filed on Wednesday, October 24, 2012, thus, 23 days after the expiration of the original petition.

The AAO notes that an "extension of stay" must be distinguished from an extension of H-1B status, which occurs through a "petition extension." Although those seeking H-1B status are currently permitted to file one form to request a petition extension, extension of stay, and change of status, they are still separate determinations. See 56 Fed. Reg. 61201, 61204 (Dec. 2, 1991). In addition, 8 C.F.R. § 214.2(h)(15)(i) specifically states that, "[e]ven though the requests to extend the petition and the alien's stay are combined on the petition, the director shall make a separate determination on each." Thus, 8 C.F.R. § 214.2(h)(14) deals only with H-1B petition extensions, 8 C.F.R. § 214.1(c) relates solely to extension of stay requests, and 8 C.F.R. § 248.3(a) addresses change of status requests to H-1B classification.² In accordance with the relevant regulatory provisions, the extension

² It must be noted that the H-1B regulations equate the word "status" to the word "classification" and not to the period of authorized stay in the United States. See 8 C.F.R. § 248.3(b) (2000); see also 8 C.F.R. §§ 214.1(c)(2), 245.2(a)(4)(ii)(C), and 103.6(c)(2) (2000). Furthermore, as the phrase "previously accorded status" is not defined in the regulations and as its use in 8 C.F.R. § 214.1(c)(4) is not distinguished from its use in 8 C.F.R. § 248.1(b), it must be interpreted as having the same meaning – the status previously held by the alien, not the same prior status held by the alien.

In addition, if the same meaning of "previously accorded status" as it is used in 8 C.F.R. § 248.1(b) were not applied to 8 C.F.R. § 214.1(c)(4), it would create the situation where an alien could change status and be approved for a specific classification but be unable to extend his or her stay. As an example, an employer files an initial I-129 requesting H-1B classification, change of status, and extension of stay on behalf of an alien in B-2 visitor status whose authorized stay is about to expire but who has not previously spent time in the United States in H or L status. If otherwise qualified and if "previously accorded status" in 8 C.F.R.

petition cannot be approved as it was filed after the expiration of the petition it sought to extend. *See* 8 C.F.R. § 214.2(h)(14).

Nevertheless, in the instant case, the appeal was improperly filed and, therefore, it is 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.

§ 214.1(c)(4) meant the same prior status, U.S. Citizenship and Immigration Services would be permitted to grant the H-1B petition approval and change of status but be prohibited from granting the extension of stay request, solely because the alien was not in H-1B status at the time the petition was filed, even though the alien had never held H-1B status at any time in the past. Not only is this result contrary to current and past practices, it would be contrary to logic and the intent of the relevant sections of the Act.