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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

FEB 0 1 2013

Date: Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

In the visa petition, the petitioner described itself as a "Distribution of Tires and Wheels" firm with one employee. To employ the beneficiary in a position it designates as a sales engineer position, the petitioner endeavors 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 because he found that the petitioner had failed to establish that the petitioner would employ the beneficiary in a specialty occupation position.

Previous counsel submitted a Form G-28 Notice of Entry of Appearance, dated September 6, 2011, with the visa petition. The petitioner's president duly executed that form. The petitioner's president also signed the visa petition. The president's signature on that document is dated September 6, 2011. The record also contains a letter, dated August 31, 2011, from the petitioner's president. The president's signature is clearly identified on those documents by a printed signature line.

The record also contains a Form G-28 signed by the beneficiary and submitted with the visa petition. His signature on that document is dated September 6, 2011. The record contains an undated copy of the beneficiary's résumé, which the beneficiary signed as well. The beneficiary's signature on those documents is clearly identified by a printed signature line.

With the appeal in this matter, counsel provided a Form G-28 signed by the beneficiary. The beneficiary's signature on that form is not dated, but counsel's signature on the same form is dated November 15, 2011. The beneficiary's signature on that form is clearly identified by a printed signature line.

Because the appeal was not accompanied by a Form G-28 executed by the petitioner, the AAO, on November 28, 2012 and in accordance with the regulation at 8 C.F.R. § 292.4(a), requested that the petitioner submit a new, duly executed Form G-28 acknowledging counsel's appearance in the Form I-290B proceeding. In response to the AAO's request, prior counsel submitted a new Form G-28.

Although the signature line on the new Form G-28 indicates that it was signed by the petitioner's president, a comparison of the signature on that new Form G-28 to the signatures on the visa petition, the president's August 31, 2011 letter, the beneficiary's résumé, and the Forms G-28 previously submitted, copies of all of which are attached, makes clear that the petitioner's president did not sign the new Form G-28. Rather, the signature on that new G-28 is unmistakably that of the beneficiary. Further, the new Form G-28 contains no indication that the beneficiary signed that form in any capacity other than on his own behalf.

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 appeal on behalf of the petitioner, and it must therefore be rejected as

improperly filed. 8 C.F.R. § 103.3(a)(1)(iii)(B); 8 C.F.R. § 103.3(a)(2)(v)(A)(*1*); 8 C.F.R. § 103.3(a)(2)(v)(A)(*2*)(*i*).

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

ORDER: The appeal is rejected.

Attachments