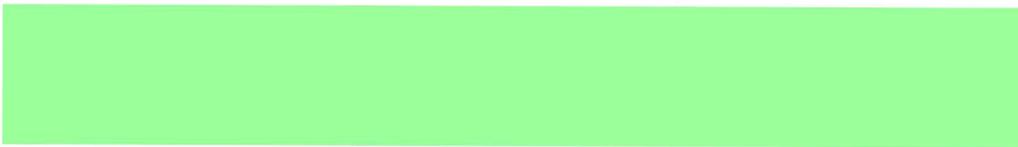




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: Office: CALIFORNIA SERVICE CENTER

FEB 14 2013

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 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 Director, California Service Center, (“the director”) initially approved the petition. Upon subsequent review, the director issued a Notice of Intent to Revoke (NOIR) approval of the petition and ultimately revoked approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

On the Form I-129, Petition for Nonimmigrant Worker, the petitioner claims it provides dialysis products and medical services and that it was established in 1996 and employs 67,988 personnel. The petitioner seeks to employ the beneficiary as a nephrology nurse specialist and, therefore, 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 revoked approval of the petition because the petitioner failed to establish that the beneficiary qualified to perform the duties of the proffered position. On May 11, 2012, an attorney filed a Form I-290B to appeal the director’s adverse decision, checking the box indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days. The attorney subsequently provided a brief and additional documentation. The attorney did not however, attach a current Form G-28, Notice of Entry of Appearance as Attorney or Representative, along with the appeal filing.¹

On January 16, 2013, the AAO sent a facsimile to the attorney requesting that a properly executed Form G-28 be submitted to the AAO within seven days. To date, no response has been received.

The regulation at 8 C.F.R. § 292.4(a) governs appearances by attorneys or representatives. It states, in pertinent part: “A notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service.” Here, the record on appeal does not include a properly filed Form G-28. An appeal that is filed without a properly executed Form G-28 is considered an improperly filed appeal and it must be rejected. 8 C.F.R § 103.3(a)(2)(v)(A)(2)(i).²

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the petitioner to establish eligibility for the benefit it is seeking. Here, the petitioner has not met its burden. Accordingly, the AAO rejects the appeal.

ORDER: The appeal is rejected. The petition remains denied.

¹ In accordance with the U.S. Citizenship and Immigration Services (USCIS) 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.” This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010).

² The AAO also notes the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii), which provides that an appeal may be considered properly filed as of its original filing date only if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.