



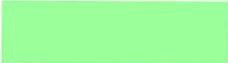
U.S. Citizenship
and Immigration
Services

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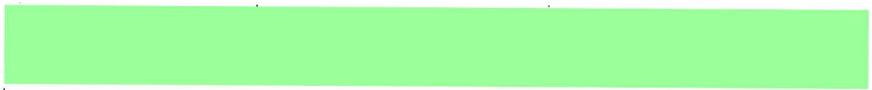


DATE **FEB 25 2013**

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)

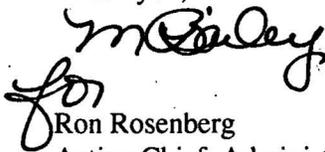
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry 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, 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 Petition for Nonimmigrant Worker (Form I-129) with the Vermont Service Center on September 20, 2011. In the Form I-129 visa petition, the petitioner described itself as a restaurant and catering marketing company established in 1999. In order to employ the beneficiary in what it designates as a catering manager/supervisor position, the petitioner seeks to classify her 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 January 12, 2012, concluding that the petitioner failed to establish that the proffered position is a specialty occupation in accordance with the applicable statutory and regulatory provisions. Counsel for the petitioner in the Form I-129 proceeding subsequently filed an appeal on February 15, 2012.

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, Notice of Entry of Appearance as Attorney or Accredited Representative] 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.

The record, however, does not contain a **new, properly executed** Form G-28 personally signed by both prior counsel and by an authorized official of the petitioning entity. The Form G-28 submitted with the Form I-290B lists Shawn Wilson as the petitioner, rather than the petitioning company.

In accordance with 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii), the AAO sent prior counsel a facsimile on January 16, 2013, notifying her that a properly executed Form G-28, signed by her and the consenting affected party, must be submitted to the AAO within fifteen (15) calendar days. However, prior counsel 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.

ORDER: The appeal is rejected.