



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **JAN 03 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:

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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

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.

On the Form I-129 visa petition, the petitioner describes itself as a publisher established in 2010. In order to employ the beneficiary in what it designates as a director of business development 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on March 9, 2011. An attorney filed an appeal and, although she submitted a properly executed Form G-28 below, she did not submit one on appeal.¹ The AAO sent a facsimile to the attorney on November 19, 2012 and requested that she submit a properly executed Form G-28 within fifteen days, but she did not respond. Accordingly, the AAO deems the record complete and ready for adjudication.

The regulation at 8 C.F.R § 103.3(a)(2)(v) states, in pertinent part, the following:

Improperly filed appeal—

(A) *Appeal filed by person or entity not entitled to file it—*

* * *

(2) *Appeal by attorney or representative without proper Form G-28—*

- (i) *General.* 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) entitled that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

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

Finally, the regulation at 8 C.F.R § 292.4(a) states, in pertinent part, that “a new [Form G-28] must be filed with an appeal filed with the [AAO].”

¹ The Form G-28 submitted by counsel on appeal appears to be a photocopy of the one she submitted when the petition was initially filed. It was executed by the petitioner on January 13, 2011, several days before the petition was filed on January 18, 2011, nearly two months before the director denied the petition on March 9, 2011, and nearly three months before the appeal was filed on April 6, 2011.

An appeal filed without a properly executed Form G-28 is considered an improperly filed appeal and it must be rejected. As the Form G-28 submitted on appeal was executed nearly three months before the appeal was filed it is neither "new" as required by 8 C.F.R § 292.4(a) nor "properly executed" as required by 8 C.F.R § 103.3(a)(2)(v)(A)(2)(i), and the appeal was not "properly filed as of its original filing date" pursuant to 8 C.F.R § 103.3(a)(2)(v)(A)(2)(iii). The appeal must therefore be rejected pursuant to 8 C.F.R §§ 103.3(a)(2)(v)(A)(2) and 292.4(a).

As the appeal was improperly filed, it must be rejected.

ORDER: The appeal is rejected.