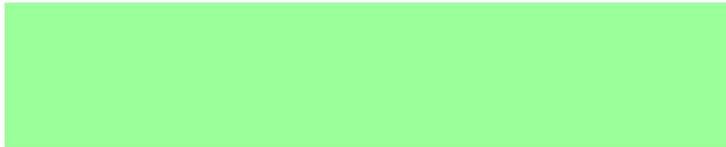




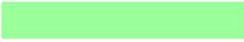
U.S. Citizenship
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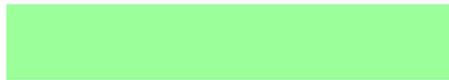


DATE: **JAN 25 2013**

OFFICE: VERMONT SERVICE CENTER

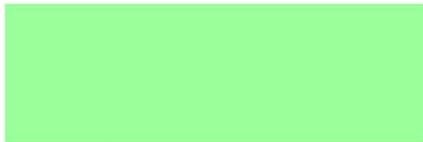
FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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:



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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on October 6, 2011. On the Form I-129 visa petition, the petitioner describes itself as a relocation services company established in 2011. In order to employ the beneficiary in what it designates as an operations manager 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 November 21, 2011, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Thereafter, counsel submitted a Notice of Appeal or Motion (Form I-290B).

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).

In the instant case, counsel submitted a Form I-290B, however, the Form G-28 filed with the appeal indicates that counsel represents the beneficiary as an applicant. The Form G-28 (Part 1.A.) specifies that counsel is representing the beneficiary in regard to the Form "I-290B." The record of proceeding does not contain a new Form G-28 completed by the petitioner to authorize counsel's representation before the AAO as required by 8 C.F.R. § 292.4(a).

USCIS regulations 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 such a proceeding. 8 C.F.R. § 103.2(a)(3). The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically states that a beneficiary of a visa petition is not an affected party and does not have any legal standing in a proceeding.¹ As the beneficiary and her 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).

Moreover, in accordance with 8 C.F.R. § 103.2(a)(1), every benefit request or other document submitted to USCIS must be executed and filed in accordance with the form instructions, and any such instructions are incorporated into the regulations. The instructions to Form I-290B state that a beneficiary or a beneficiary's attorney or representative may not file an appeal or motion.

¹ The rejection of the appeal does not prohibit the petitioner from filing a new Form I-129 H-1B petition, with a valid LCA and proper fee, to USCIS for consideration.

Furthermore, the instructions indicate that a Form G-28 must be attached if the Form I-290B is signed by a legal representative. The petitioner's "attorney or representative must submit a Form G-28 with the appeal or motion." Additionally, the instructions further state that "[i]f the appeal or motion is filed by an attorney or representative without a properly executed Form G-28, it will be dismissed or rejected."

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.