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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

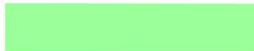


U.S. Citizenship
and Immigration
Services



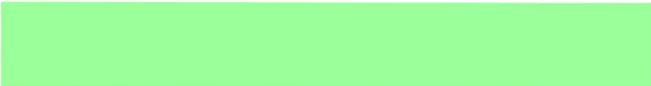
DATE: **JUL 15 2013**

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)

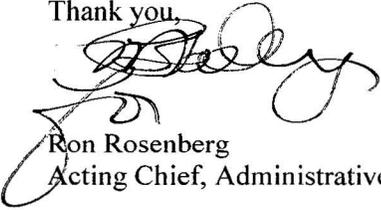
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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 instant 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 submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center. On the Form I-129 visa petition, the petitioner describes itself as a retail development business established in 2003. In order to employ the beneficiary in what it designates as a business marketing analyst 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on September 19, 2012, concluding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

Alleged counsel for the petitioner subsequently filed a timely appeal on October 16, 2012.¹ The submission did not include a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. On January 9, 2013, the director notified the petitioner and counsel that the submission did not include a properly completed Form G-28 accompanying the Form I-290B. Counsel sent a Form G-28 to the AAO, which was received on April 1, 2013.² However, Part 1 of the Form G-28 indicates that it is with regard to the Form I-129 petition (not the Form I-290B appeal).

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.

Effective March 4, 2010, the regulation at 8 C.F.R. § 292.4(a) requires that a "new [Form G-28] must be filed with an appeal filed with the [AAO]." 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." The record, however, does not contain a new, properly executed Form G-28 personally signed by both counsel and by an

¹ On the Form I-290B, counsel checked Box B in Part 2 of the form to indicate that counsel was filing an appeal and that a brief and/or additional evidence would be submitted within 30 days. The AAO reviewed the entire record of proceeding and finds that the petitioner and counsel did not provide a brief and/or additional evidence within the time allotted (or thereafter). The AAO fully and in-detail reviewed the Form I-290B and counsel's written statement on the appeal. However, the petitioner and counsel failed to identify any specific assignment of error.

² The United States Postal Service indicates that the submission containing the Form G-28 was mailed on March 26, 2013.

authorized official of the petitioning entity. As noted, the Form G-28 submitted by counsel in response to the director's request was filed for the Form I-129 petition instead of the Form I-290B appeal.

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