



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JUL 16 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

A Form I-129, Petition for Nonimmigrant Worker, was submitted to the California Service Center on behalf of the petitioner on June 11, 2012. The Form I-129 visa petition describes the petitioner as an information technology (IT) services business established in 2012.¹ In order to employ the beneficiary in what is designated as a programmer analyst 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).

On November 2, 2012, the director denied the petition, concluding that the petitioner failed to establish eligibility for the benefit sought in accordance with the applicable statutory and regulatory provisions. Alleged counsel for the petitioner subsequently filed a Form I-290B, Notice of Appeal or Motion. The matter is now before the AAO on appeal. The appeal will be rejected.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) states that the affected party must submit an appeal on Form I-290B. The term "affected party" is defined as "the person or entity with legal standing in a proceeding. . . . An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter." 8 C.F.R. § 103.3(a)(1)(iii)(B)

In accordance with the 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 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).

Moreover, 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 counsel and by an authorized official of the petitioning entity.

¹ On the Form I-129 petition, the petitioner stated that it has two employees. The petitioner stated its gross annual income as "Proj. \$80,000/yr." The petitioner did not provide any information regarding its net annual income.

In accordance with 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii), the AAO sent counsel a facsimile on April 23, 2013, notifying him that a "new and properly executed Form G-28," signed by him and the consenting affected party, must be submitted to the AAO. Counsel responded to the request by submitting a Form G-28 dated prior to the director's decision denying the petition and which bears a rubber stamp signature for the petitioner's representative. The Form G-28 indicates that it is for the "Petition for Nonimmigrant Worker (I-129 H-1B)" rather than the appeal.

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

- (A) *Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The regulations require a handwritten signature of the petitioner on benefit requests. Specifically, the regulation states the following:

Signature. An applicant or petitioner must sign his or her benefit request. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an [sic] benefit request that is being filed with the USCIS [U.S. Citizenship and Immigration Services] is one that is either *handwritten* or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format.

8 C.F.R. § 103.2(a)(2) (emphasis added). Thus, a handwritten signature is required unless the petition is filed electronically. The AAO notes that the request in the instant case was not filed electronically.

The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part:

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission.

The instructions for the Form G-28 state that a petitioner must file a new Form G-28 with the AAO when filing a Form I-290B. Furthermore, the instructions state that the petitioner "must sign and

date the form in black ink." Notably, the Form G-28 states, "The signatures must be original. We will not accept photocopied or typewritten signatures."²

An attorney for a petitioner may properly file an appeal on behalf of a petitioning entity when it is accompanied by a new and properly executed Form G-28. An acceptable signature is one that is *handwritten*.³ Here, the Form G-28 submitted to the AAO subsequent to the appeal was not signed by the petitioner. Instead, it bears the mark of a rubber stamp stating "P. Prabhakava Rao." No explanation was provided. Upon review of the submission, the AAO finds that the Form G-28 was not properly executed.

Moreover, the Form G-28 submitted to the AAO was for the "Petition for Nonimmigrant Worker (I-129 H-1B)" rather than the appeal (Form I-290B). Additionally, the Form G-28 is dated June 7, 2012, which was approximately five months before the director issued the decision in the instant case. Thus, the record of proceeding does not contain a new, properly executed Form G-28 filed with the appeal in accordance with the pertinent regulations. The AAO therefore concludes that the appeal was improperly filed and must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I), which calls for rejection of an improperly filed appeal, where the person filing it is not entitled to do so.

² For additional information on the Form G-28 and its corresponding instructions, *see* the USCIS website at <http://www.uscis.gov/g-28> (last visited July 10, 2013).

The USCIS webpage, updated on April 26, 2013, entitled "Signature Requirements on USCIS Forms," states, "The petitioner or immigration benefit applicant or his or her legal guardian for children under age 14 must sign the Form G-28 in the original." USCIS Website, Forms and Fees, Signature Requirements on USCIS Forms, available on the Internet at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=9453d59ae8a8e010VgnVCM1000000ecd190aRCRD&vgnnextchannel=fe529c7755cb9010VgnVCM10000045f3d6a1RCRD> (last visited on July 10, 2013).

³ Not only does the petitioner's signature on the Form G-28 authorize representation by an attorney or accredited representative in matters before USCIS, it serves as a consent to disclosure of information covered under the Privacy Act of 1974. The Immigration and Naturalization Service (legacy INS) first implemented the requirement that a petitioner or applicant sign the Form G-28 in the final rule "Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits" 59 Fed. Reg. 1455 (Jan. 11, 1994). In response to several commenters who suggested that the attorney need be the only signatory on the Form G-28, the agency explained that other commenters had properly noted that capture of the petitioner's signature on the Form G-28 "would address potential Privacy Act concerns." *Id.* at 1455. The agency emphasized that the "petitioner must sign the Form G-28 to definitively indicate to the Service that he or she has authorized the person to represent him or her in the proceeding." *Id.*

The AAO further notes that even if the appeal had been properly filed, there are additional issues with regard to the petitioner's signature. Specifically, the Form I-129 was also marked with a rubber stamp rather than the handwritten signature of the petitioner's authorized representative.⁴

The signature line on the Form I-129 for the petitioner provides that the petitioner is certifying, "under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." To be valid, 28 U.S.C. § 1746 requires that declarations be "subscribed" by the declarant "as true under penalty of perjury." In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: "Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury."

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration "for" another. Without the petitioner's actual signature as declarant, the declaration is completely robbed of any evidentiary force. *See In re Rivera*, 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

The AAO notes that the integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing the use of a rubber stamp, which could be applied by anyone, on behalf of the petitioner would leave the immigration system open to fraudulent filings.⁵

Thus, the requirement for a signature *under penalty of perjury* cannot be met by the use of rubber stamp. Practically, the signature requirement reflects a genuine concern regarding the validity of the temporary job offer contained in Form I-129 petitions. To this end, the employer's signature serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to mark a petition using a rubber stamp. The petition has not been properly filed because the petitioning U.S. employer did not sign the petition. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition.

⁴ The AAO will not speculate as to whether the petitioner's authorized representative applied the rubber stamp or whether it was applied by another individual.

⁵ The AAO notes prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the alien or employer had no knowledge. *United States v. O'Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

While the Service Center did not reject the petition, the AAO is not controlled by service center decisions. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at 3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001). The AAO conducts appellate review on a *de novo* basis, and it was in the exercise of this function that the AAO identified this ground for rejecting the appeal. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The appeal was not been filed by the petitioner, or by any entity with legal standing in the proceeding. Therefore, the appeal was not been properly filed, and must be rejected. Moreover, the underlying petition also was not properly filed. Thus, further action on the petition cannot be pursued. Accordingly, the AAO need not examine the director's bases for denial of the petition as the issues are moot. If the petitioner wishes to pursue H-1B classification for the beneficiary, it may file a new, properly executed Form I-129 accompanied by the required filing fee(s) and supporting evidence for consideration by USCIS.

ORDER: The appeal is rejected.