



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

Date: **MAR 07 2013** Office: VERMONT 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 IN THE FORM I-129 PROCEEDING:

[Redacted]

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,

*Michael T. Kelly*  
for Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The director of the Vermont 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 as improperly filed.

The petitioner, self-described as a pain management hospital, seeks to employ the beneficiary as a health manager. Accordingly, the petitioner endeavors to classify the beneficiary 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 December 19, 2011, finding that the petitioner failed to establish that the proffered position was a specialty occupation.

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.”

Although the attorney who submitted the Form I-290B is in the same law firm as the attorney who had previously submitted Form G-28 and represented the petitioner prior to the director’s denial of the Form I-129 visa petition on December 19, 2011, the record of proceeding does not contain a new, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, personally signed by both the attorney and by an authorized official of the petitioning entity for the Form I-290B filed in this matter, as required by the aforementioned provision at 8 C.F.R. § 292.4(a).

On December 4, 2012 and on January 29, 2013 by facsimile transmission to the attorney who submitted the Form I-290B, the AAO requested a new Form G-28 complying with the above-referenced requirement at 8 C.F.R. § 292.4(a). Specifically, the AAO advised the attorney that without a new, valid, and fully executed Form G-28, signed by an official of the petitioning entity authorizing the attorney to represent the petitioner, the AAO would not consider the appeal to have been properly filed. Pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(2) and its subclauses, the attorney was instructed to submit a duly executed Form G-28 by fax. The first fax from the AAO to the attorney, transmitted on December 4, 2012, specified 15 calendar-days as the period for reply; the AAO’s second fax, transmitted to the attorney on January 29, 2013, allowed the attorney 84 calendar days in which to reply.

The AAO further advised that failure to timely respond to the AAO’s request would result in the rejection of the appeal. As of the date of this decision, no Form G-28 from that attorney has been received; however, the attorney sent a letter via facsimile, dated January 30, 2013, stating an intent to withdraw the Form I-290(B) on behalf of the petitioner.

Absent the new and properly executed Form G-28, which the AAO requested but has not received, the attorney who submitted the Form I-290B cannot be considered the petitioner’s attorney of record with regard to either filing or withdrawing the appeal. U.S. Citizenship and Immigration Services

regulations specifically prohibit the filing of an appeal by an attorney or representative without a properly executed Form G-28 entitling that person to file the appeal. 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i).

An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(A)(1). As the aforementioned attorney is not a recognized party in the Form I-290B proceeding, he is not authorized to file an appeal on behalf of the petitioner in this matter. *Id.*; 8 C.F.R. § 103.3(a)(1)(iii)(B).

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

**ORDER:** The appeal is rejected.