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

(b)(6)

[redacted]

DATE: MAY 17 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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 nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner submitted a Form I-129, Petition for Nonimmigrant Worker, to the California Service Center on December 13, 2010. On the Form I-129 visa petition, the petitioner describes itself as a medical clinic established in 1996. In order to employ the beneficiary in what it designates as a health educator 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 May 26, 2011, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation position in accordance with the applicable statutory and regulatory provisions. Thereafter, a motion to reopen and reconsider was submitted. The director reviewed the motion and, on October 26, 2012, again denied the petition, concluding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation. Alleged counsel submitted an appeal of the decision to the AAO.

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, Notice of Appeal or Motion, 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).

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 G-28 filed with the Form I-290B is not a **new, properly executed** Form G-28 personally signed by both counsel and by an authorized official of the petitioning entity. Rather, the Form G-28 submitted is a photocopy of the Form G-28 submitted with the Form I-129 petition. The AAO notes that the photocopy is identical in every way to the previously submitted Form G-28 except that white correction tape was placed over "I-129" under Part 1(A) of the form, and "I-290B" was substituted. The dates were also changed from "12/9/2010" to "11/19/2012." Thus, counsel and the petitioner signed the Form G-28 approximately two years before the instant appeal was filed.

In accordance with 8 C.F.R. § 103.3(a)(2)(v)(A)(*2*)(*iii*), the AAO sent a facsimile on April 4, 2013, notifying counsel that a "**new** and properly executed Form G-28," signed by counsel and the

consenting affected party must be submitted to the AAO within fifteen (15) calendar days. The facsimile notified counsel that if the required document was not submitted within the allotted time, the appeal would be rejected as improperly filed pursuant 8 C.F.R. § 103.3(a)(2)(v)(A)(*1*). However, counsel failed to respond to this request within the allotted time period (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.