

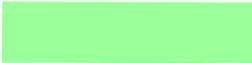


U.S. Citizenship
and Immigration
Services

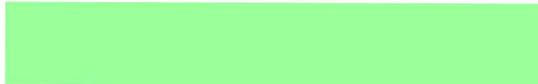
(b)(6)



DATE: **NOV 04 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 IN THE FORM I-129 PROCEEDING:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: On September 28, 2012, the service center director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office. The appeal will be rejected as improperly filed.

On the Form I-129 visa petition, the petitioner describes itself as a software development and services company established in 2001. In order to employ the beneficiary in what it designates as a senior technical architect 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish eligibility at the time of filing the nonimmigrant visa petition. Thereafter, counsel for the petitioner in the Form I-129 proceeding submitted an appeal of the decision to the AAO. The AAO summarily dismissed the appeal, noting that the appeal failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Subsequently, a letter was received by the AAO requesting the proceeding be reopened. The AAO reviewed the letter and reopened the matter *sua sponte*. The petitioner was notified that it was permitted a period of thirty days in which to submit a brief. The AAO also noted that the appeal had been filed without a new and properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. The AAO requested that the petitioner provide a duly executed Form G-28 signed by counsel and the petitioner.¹ The petitioner was provided with the timeframe to submit the Form G-28. However, the petitioner failed to respond within the allotted time (or thereafter).

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] 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).

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 The Form I-290B was not accompanied by a new and properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. The record contains a copy of the Form G-28 that was originally submitted with the Form I-129 and is dated prior to the director's decision denying the petition.

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)(I), which calls for rejection of an improperly filed appeal, where the person filing it is not entitled to do so.²

ORDER: The appeal is rejected.

² Furthermore, a review of U.S. Citizenship and Immigration (USCIS) records indicates that on April 8, 2013, a date subsequent to the denial of the instant petition, the petitioner submitted a new Form I-129 on the beneficiary's behalf. USCIS records further indicate that this second petition was approved on October 4, 2013. Because the beneficiary in the instant petition has been approved for H-1B employment with the petitioner based upon the filing of another petition, further pursuit of the matter at hand is moot.