



U.S. Citizenship
and Immigration
Services

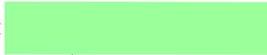
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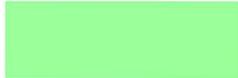
NOV 07 2013

OFFICE: CALIFORNIA 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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 filed a Form I-129 (Petition for a Nonimmigrant Worker) with the California Service Center on April 20, 2012. In the Form I-129 visa petition, the petitioner described itself as an IT consulting firm established in 2004. In order to employ the beneficiary in what it designates 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).

The director denied the petition on January 2, 2013, concluding that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation. Counsel for the petitioner in the Form I-129 proceeding subsequently submitted a Form I-290B (Notice of Appeal or Motion) on February 1, 2013. The matter is now before the AAO on appeal. The appeal will be rejected.

As will be explained below, the appeal filed in this matter will be rejected because it was not signed by the petitioner or the attorney of record as established by a properly filed Form G-28. More specifically, the Form G-28 and Form I-290B are not signed by the petitioning employer, but instead by an attorney purportedly on behalf of the petitioner.¹

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 regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part, the following:

- (B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

¹ The AAO conducted a preliminary review and noted that when comparing the signatures in the record of proceeding, the signature on the Form G-28 is visibly different from signatures on other forms in the record. On August 6, 2013, the AAO sent a Request for Evidence (RFE) to the petitioner and prior counsel. The petitioner and prior counsel responded to the RFE on September 9, 2013, stating that the petitioner's representative had not personally signed the Form G-28. Rather, prior counsel signed the Form G-28 as counsel and "for" the petitioner.

The regulation at 8 C.F.R. § 292.4(a) provides the following (emphasis added):

An appearance must be filed on the appropriate form as prescribed by DHS by the attorney or accredited representative appearing in each case. *The form 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. . . .* When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature will constitute a representation that under the provisions of this chapter he or she is authorized and qualified to appear as a representative as provided in 8 C.F.R. 103.2(a)(3) and 292.1. Further proof of authority to act in a representative capacity may be required.

An attorney for a petitioner may properly file an appeal on behalf of a petitioning entity under certain circumstances. Here the record of proceeding contains a Form G-28 that was submitted with the appeal. However, the document does not establish that the attorney represents the petitioner, because it was not signed by the petitioner. Instead, it was signed on behalf of the petitioning entity by the attorney who submitted the appeal.² The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) provides the following with respect to appeals submitted by attorneys without a proper Form G-28:

- (i) *General.* 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. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

Notably, the AAO sent prior counsel a facsimile on September 11, 2013 and on October 9, 2013, notifying him that a properly executed Form G-28, signed by him and the consenting affected party, must be submitted to the AAO within fifteen (15) calendar days. See 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(iii). However, prior counsel failed to respond to these requests within the

² The regulations do not permit any individual to sign for another person except in limited circumstances. More specifically, the regulation at 8 C.F.R. § 103.2(a)(2) 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 [a] benefit request that is being filed with the USCIS is one that is either handwritten or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format.

There is no provision for proxy signatures, unless the person is less than 14 years old or mentally incompetent. *Id.* Here, there is no evidence in the record of proceeding to indicate that the petitioner's authorized official delegated his signature authority under the exceptions permitted by the regulation.

allotted time period (or thereafter). The regulation at 8 C.F.R. § 103.2(a)(3) provides that where a notice of representation on a Form G-28 is "not properly signed, the benefit request will be processed as if the notice had not been submitted."³

The record does not contain a new, properly executed Form G-28 personally signed by both prior counsel and by an authorized official of the petitioning entity. 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.⁴

ORDER: The appeal is rejected.

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.*

⁴ 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 in accordance with the applicable statutory and regulatory provisions, for consideration by USCIS.