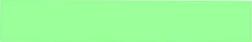




U.S. Citizenship
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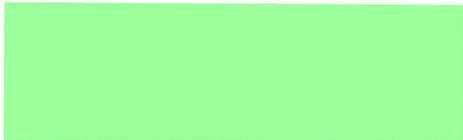


DATE: **OCT 02 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

On the Form I-129 (Petition for Nonimmigrant Worker), the petitioner describes itself as marketing business established in 1962. In order to continue to employ the beneficiary in what it designates as an interactive developer 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on June 24, 2013, finding that the petitioner failed to establish eligibility for the benefit sought. More specifically, the director determined that the petitioner failed to provide a Labor Condition Application that corresponded to the H-1B petition. Additionally, the director found that the petitioner failed to establish that it would pay an adequate salary for the beneficiary's work. Counsel subsequently submitted a Form I-290B (Notice of Appeal or Motion) to U.S. Citizenship and Immigration Services (USCIS) on July 22, 2013. Notably, the record of proceeding does not contain a new Form G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative) signed by the petitioner to authorize counsel's representation before the AAO as required by 8 C.F.R. § 292.4(a).¹ Additionally, the AAO notes that counsel indicated on the Form I-290B that the appeal was being submitted on behalf of the beneficiary rather than on behalf of the petitioner.

A petitioner may be represented by an attorney. 8 C.F.R. § 103.2(a)(3). The regulations specifically state, however, that the beneficiary of a visa petition is not a recognized party in a proceeding. *Id.* A beneficiary of a visa petition is not an affected party and does not have any legal standing in a proceeding. 8 C.F.R. § 103.3(a)(1)(iii)(B).

Furthermore, in accordance with 8 C.F.R. § 103.2(a)(1), every benefit request or other document submitted to USCIS must be executed and filed in accordance with the form instructions, and any such instructions are incorporated into the regulations. The instructions to the Form I-290B state that a beneficiary or a beneficiary's attorney or legal representative may not file an appeal or motion. Furthermore, the instructions indicate that a Form G-28 must be attached if the Form I-290B is signed by a legal representative. The petitioner's "attorney or representative must submit a Form G-28 with the appeal or motion." Additionally, the instructions further state that "[i]f the appeal or motion is filed by an attorney or representative without a properly executed Form G-28, it will be dismissed or rejected."

¹ The AAO sent counsel a facsimile on August 26, 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 within fifteen (15) calendar days, however, counsel failed to respond to this request within the allotted time period (or thereafter).

As the beneficiary and prior counsel have no legal standing in this proceeding, prior counsel is not authorized to file the appeal, and the appeal must therefore be rejected as improperly filed. 8 C.F.R. § 103.3(a)(1)(iii)(B); 8 C.F.R. § 103.3(a)(2)(v)(A)(1); 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i).²

ORDER: The appeal is rejected.

² The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As the appeal is rejected for the reason discussed above, however, the AAO will not further discuss the additional issues and deficiencies that it observes in the record of proceeding.