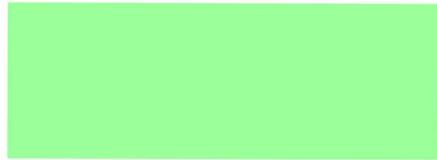


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

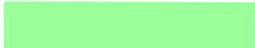


U.S. Citizenship
and Immigration
Services



DATE: **OCT 29 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: SELF-REPRESENTED

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: The Director, Vermont Service Center (hereinafter "the 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.

On the Form I-129 visa petition, the petitioner describes itself as a garment development and manufacturing firm established in 2008. In order to employ the beneficiary in what it designates as a part-time business analyst 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 on January 16, 2013, finding that the petitioner failed to establish that the proffered position was a specialty occupation.

Prior counsel for the petitioner in the Form I-129 proceeding subsequently filed a timely appeal.

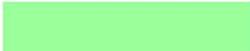
The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) states, in part, the following:

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.

Furthermore, 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, a "new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office." This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010). Although counsel in this matter previously entered her appearance at the time the Form I-129 was filed, the record does not contain a new, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, personally signed by both counsel and by an authorized official of the petitioning entity filed with the appeal. Thus, as the submitted Form G-28 did not meet the requirements of the regulation at 8 C.F.R. § 292.4(a) or the instructions to the Form I-290B, counsel failed to establish that she represents the petitioner as an attorney or accredited representative with regard to the instant appeal before the AAO.

On June 18, 2013, the AAO sent a request for a new Form G-28 to prior counsel via facsimile transmission. Specifically, the AAO advised that without a new, valid, and fully executed Form G-28, signed by an official of the petitioning entity authorizing counsel 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, prior counsel was instructed to submit a new, duly executed Form G-28 by mail or fax within fifteen calendar days. Prior counsel was 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 correspondence from counsel has been received.

Absent a new and properly executed Form G-28, prior counsel cannot be considered the petitioner's attorney of record with regard to the appeal currently before the AAO. USCIS 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 appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

It is further noted that a review of USCIS records indicates that, subsequent to the filing of the instant petition, another employer filed a Form I-129 petition seeking nonimmigrant H-1B classification on behalf of the beneficiary. USCIS records further indicate that this other employer's petition was approved on May 3, 2013. Therefore, even if the appeal had been properly filed, the beneficiary in the instant petition was approved for H-1B employment with another petitioner and further pursuit of the matter at hand would be moot.

ORDER: The appeal is rejected.