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U.S. Citizenship
and Immigration
Services

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FILE: WAC 05 205 50361 Office: CALIFORNIA SERVICE CENTER Date: **MAR 07 2007**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF BENEFICIARY:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A).

The petitioner states that it is engaged in the import, export, and wholesale of construction materials. It seeks to employ the beneficiary as its managing director pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L). The director denied the petition based on the conclusion that the petitioner failed to establish that (1) it had obtained sufficient physical premises in the United States to house the organization; or (2) a qualifying relationship existed between the petitioner and a foreign entity as required by the regulations.

The Form G-28, Entry of Appearance as Attorney or Representative, that was submitted for the record in support of the appeal was not signed by the petitioner or an authorized representative thereof. Citizenship and Immigration Services (CIS) 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). In this case, the Form G-28 that was submitted for the record was signed by the beneficiary in his personal capacity. While it is noted for the record that, while the beneficiary does appear to have been an agent for the petitioner, there is no evidence in the record that the beneficiary was legally authorized to sign as a representative on behalf of the petitioner with regard to the appeal before the AAO. Specifically, the Form G-28 submitted by counsel clearly limits his representation/appearance to the beneficiary, and nowhere is it indicated that the beneficiary signed the form in his capacity as managing director for the petitioner.¹

Furthermore, counsel for the beneficiary indicated on Form I-290B that he would submit a brief and/or additional evidence to address the director's denial within thirty days. Although counsel submitted a brief statement on the Form I-290B, he failed to adequately address the director's conclusions. In this brief statement, counsel states "[p]etitioner was originally represented by legal counsel who was suspended or disbarred. Said counsel took possession of petitioner's U.S. corporate documents. Additional time is needed to locate and secure original or copies of corporate records requested." Counsel's statement on the Form I-290B does not specifically identify any errors on the part of the director.

On the Notice of Appeal received on January 19, 2006, counsel for the beneficiary clearly indicates that it would send a brief with the necessary evidence to the AAO within thirty days. According to 8 C.F.R. § 103.3(a)(2)(i), the petitioner "shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision," which in the case at hand would be no later than Monday, January 23, 2006. Although counsel requested an additional 30

¹ It is noted that the original G-28 filed with the petition is identical to the one submitted in support of the appeal. As a result, the AAO notes that counsel was not an authorized representative of the petitioner during the adjudication process. Pursuant to 8 C.F.R. 103.2(3), a beneficiary of a petition is not a recognized party in such a proceeding. Consequently, it is noted that CIS erroneously recognized counsel as an authorized representative of the petitioner despite the fact that the Form G-28 clearly limited his representation to the beneficiary.

days in which to submit its appeal, to date there is no indication or evidence that counsel ever submitted a brief and/or evidence in support of the appeal with the Service or with the AAO.

On January 4, 2007, the AAO sent a fax to counsel. The fax advised counsel that no evidence or brief had been received in this matter and requested that counsel submit a copy of the brief and/or additional evidence, if in fact such evidence had been submitted, within five business days. As of the date of this decision, the AAO has received no response from counsel. As stated above, absent a clear statement, brief and/or evidence to the contrary, counsel does not identify, specifically, an erroneous conclusion of law or statement of fact. Hence, the appeal would have been summarily dismissed if it had been properly filed. *See* 8 C.F.R. § 103.3(a)(1)(v).

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)(I). As the form G-28 was not properly executed, counsel is not authorized to file an appeal.

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

ORDER: The appeal is rejected.