(b)(6)

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

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAR 2 5 2013 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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 PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, ("the director") denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The appeal will be rejected.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner was incorporated under the laws of the State of Delaware in September 2005. The petitioner stated on the Form I-129 (Petition for Nonimmigrant Worker) that it employed seven personnel, and had a gross annual income of $1.5 million and a net annual income of $100,000 when the petition was filed. The petitioner indicated it provides software and services and claimed to be a wholly owned subsidiary of a United Kingdom company. The petitioner seeks to employ the beneficiary in the United States in a specialized knowledge capacity, as an implementation consultant, for an initial period of three years.

The director denied the petition, concluding that the petitioner failed to establish: (1) the beneficiary possessed specialized knowledge or had been or would be employed in a capacity that requires specialized knowledge; and (2) a qualifying relationship with the foreign entity which had previously employed the beneficiary abroad. The director also found that the beneficiary would be placed at the worksite of an unaffiliated employer as labor for hire, contrary to the L-1 Visa Reform Act of 2004.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof in that the evidence establishes that the beneficiary possesses specialized knowledge and will be employed in the United States in a specialized knowledge capacity and not as labor for hire.

The appeal must be rejected because the petition was never properly filed.

Upon review of the record, the initial Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, and the Form I-129 are not signed by the petitioning employer, as required by regulation, but instead by an attorney purportedly on behalf of the petitioner. Significantly, the attorney attempted to sign the visa petition under penalty of perjury on behalf of the petitioning employer as well as the Form G-28 authorizing representation. Thus, none of the initial required forms that relate to this individual beneficiary are signed by an official of the petitioning employer. The regulations do not permit any individual who is not the petitioner to sign the Form I-129 petition.

The regulation at 8 C.F.R. § 103.2(a)(2) provides:

> *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 benefit request, 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.

(Emphasis added.)

We acknowledge that the record contains a document titled "Power of Attorney" on the petitioner's letterhead dated November 6, 2009 which is signed by Chief Financial Officer. The document reads in pertinent part:

> By this letter, on behalf of myself, [the petitioner] and its associated company [the foreign entity], I authorize you to sign my name to Form I-129, Form G-28 and Form I-907 as if I were signing them myself on behalf of these employers. I have reviewed the forms and agree with them.

However, this document does not meet the signature requirements of any of the controlling United States Citizenship and Immigration Services (USCIS) regulations. There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. Accordingly, the petition has not been properly filed because the petitioning U.S. employer did not sign the petition.

The petitioner signature line on the Form I-129 provides that the petitioner is certifying "under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." To be valid, 28 U.S.C. § 1746 requires that declarations be "subscribed" by the declarant "as true under penalty of perjury." In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: "Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury."

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration "for" another. Without the petitioner's actual signature as declarant, the declaration is completely robbed of any evidentiary force. *See In re Rivera*, 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) The signature requirement reflects a genuine Form I-129 program concern regarding the validity of the temporary job offer contained in Form I-129 petitions. To this end, the employer's signature serves as certification under penalty of perjury that the petition for the temporary worker, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. The integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign the petition, and notices of appearance and employment offers on behalf of the petitioner based on a broad

assignment of authorization would leave the immigration system open to fraudulent filings.[1] The integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury.

The AAO notes that an entirely separate line exists for the signature of the preparer declaring that the form is "based on all information of which [the preparer has] any knowledge." Thus, the Form I-129 petition acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Moreover, we note that the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney's unsupported assertions on the petition have no evidentiary value even if they are alleged on behalf of the petitioner via a power of attorney.

The petition in the present matter has not been properly filed because the petitioning U.S. employer did not sign the petition.[2] Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. Thus, further action on the petition cannot be pursued. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A). While the Service Center did not reject the petition, the AAO is not bound or controlled by such action. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at *3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001). The AAO reviews each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner is not precluded from filing a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is entitled to the status sought under the immigration laws.

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[1] While the AAO does not find any malfeasance in this matter, it notes prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the alien or employer had no knowledge. *United States v. O'Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

[2] Moreover, the initial Form G-28 did not include the signature of an authorized representative of the company. The regulation at 8 C.F.R. § 292.4(a) provides:

> 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 shall 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.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirel with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is rejected.